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ABSTRACT

The study's objectives were to determine how many migratory farm workers were charged with criminal offenses, who they were, and how they were treated in lay courts in Orleans and Steuben Counties (New York) in 1968 and 1969. Lacking comparative data from other jurisdictions, a comparison between migrants and a random sampling of residents in these same courts was drawn. Data were obtained on the: total number of migratory farm workers in these courts, types and dispositions of charges, number of migratory farm workers represented by counsel, relative success of public defenders representing these workers compared with retained counsel for resident defendants, and possible causes of crime by migratory workers. Data were obtained from: criminal dockets in 18 town and village justice courts and 2 county courts, statistical reports of the 2 types of public defender offices, records of hearings by governmental and quasi-governmental agencies, interviews, and observations. Some findings were: (1) the total number of migratory farm workers charged with criminal offenses in these counties was insignificant; (2) the "typical migrant defendant" was male, 37 years old, black, arrested on charges of having committed minor offenses and convicted almost 90 percent of the time; and (3) the resident defendant was male, white, about 13 years younger, more likely to be charged with misdemeanors, and was about 14 percent less likely to be convicted. (Author/NQ)

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THE COURTS AND THE MIGRANTS

BY

R. WAYNE MAHOOD

JOHN HOPF

GENESEO, NEW YORK

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ABSTRACT

This is a report of a descriptive and analytical study of selected justice courts in Orleans and Steuben Counties (New York State) in 1968 and 1969. The primary objectives were to determine how many migratory farm workers were charged with criminal offenses, who they were, and how they were treated in these lay courts. Treatment included the dispositions of charges, release procedures, and the extent and availability of counsel, as well as the attitudes of the justices and the arresting officers, as much as possible.

The particular counties and the courts were selected because of the relatively large numbers of migrants there and because of the accessibility of the courts. Lacking comparative data from other jurisdictions, it was decided to draw a comparison between migrants and a random sampling of residents in these same courts. The comparison offered a standard by which to evaluate law enforcement procedures as they affected a small, but significant minority among us.

Data were sought regarding: 1) the total number of migratory farm workers in these courts, 2) the types of charges and dispositions of the charges, 3) the number of migratory farm workers represented by counsel, 4) the relative success of public defenders representing these workers compared with retained counsel for resident defendants, 5) the possible causes of crime by migratory workers. Data were obtained from: criminal dockets in eighteen town and village justice courts and two county courts, statistical reports of the two types of public defender offices, records of hearings by governmental and quasi-governmental agencies, interviews, and observations.

It was found that the total number of migratory farm workers charged with criminal offenses in these counties was insignificant: 3% in one county and 4.8% in the other. The "typical migrant defendant" was male, 37 years old, black, arrested on charges of having committed minor offenses (public intoxication, assault third, or disorderly conduct) and convicted almost 90% of the time. Generally, he was either released from custody pending trial or tried at his first appearance. He was bailed less than 20% of the time. If convicted, and he was almost certain to be, he could expect either a jail sentence or a fine. If jailed, he could expect to serve between 12 and 15 days. If fined, he paid between $18.75 and $25.00. His day in court was short, a median of one day. He was represented by counsel less than 6% of the time (between 1.5% and 3.8% in misdemeanor and violations cases) and with counsel had between 25% and 50% chance of having the charges withdrawn or dismissed. Also with the assistance of counsel his case took a little longer, varying from 7 to 40 days more.

His counterpart in these same courts, the resident, was also male, but he was white and about 13 years younger. He was, however, more likely to be charged with misdemeanors, rather than violations, and was about 14% less likely to be convicted, in part because he had counsel twice as often. While he was not as frequently released on recognizance, he was more certain to have been bailed. Not only was he less certain to be convicted, he was less likely to be jailed, and in one county he even paid a smaller fine than the migrant defendant. Thus, the resident went into court with the advantage and tended to come out the same way.

The reasons for arrests of migratory farm workers are difficult to document, but it appears that the determining factors were the high visibility of the alleged offenses and the offensiveness of the migrant behaviors to the residents. Further, while the proximate causes of these offensive behaviors may have been "booze, women, gambling," the underlying causes seem to be the conditions under which these "strangers in the land" live and work.

The extremely high conviction rates of migratory farm workers charged with criminal offenses was regarded as resulting from the combination of the nature of the offenses and the attitudes of the justices and the arresting officers. Migratory farm workers pose a problem to white, lay justices because of apparent differences in values between them and the migrants, because of the migrant's generally weak self-concept, and because of justices' fears that these migrants will remain to become a burden to resident taxpayers.

Recommendations were based on the need for keeping the migratory farm worker out of the courts, where he has come to expect discriminatory treatment. These include organization of the workers themselves, alteration of the employment relationships and worker rights, use of legal interns in addition to public counsel, institution of the more inclusive district courts rather than lay courts, bail reform, and assistance to the migrant to develop more healthy self-concept. Some of these recommendations are realizable in the near future while others must await more legislative attention. None are impossible.

ACKNOWLEDGEMENTS

A common practice is to thank in some vague way "all those persons too numerous to mention who contributed so much to making this masterpiece possible." While avoiding the problem of recalling each person who provided some help and preventing omissions sure to inspire bitterness toward the writer, we choose instead to "walk where angels fear to tread."

Obviously, thanks must be given to the New York State Center for Migrant Studies, particularly to Dr. Gloria Mattera, Director, to the Executive Council, to Project Director Bill Bright, Jr., and to his Successor, Dr. James O. Schnur, for their faith in what could have been perceived as a "shot in the dark." They also provided contact with Boren Chertkov, Counsel for the United States Senate Subcommittee on Migratory Labor, whose "leads" and reports of hearings proved valuable. Special thanks must also be given to teacher-justice Sam Orlando, who "educated" us early in our quest for a research design, to Justice Carmen Battaglia, who furthered our "education," to Justice Clare Jones, who proved to be the "weather-vane," determining the adequacy of our research technique, and to all the justices who allowed us into their courts and access to their dockets.

Recognition must also be given to Mssrs. Joseph C. Segor, Executive Director of the Migrant Services Foundation, Miami, Florida, and Max B. Rothman, Division Director of the Camden Legal Services, Camden, New Jersey. Reverend Timothy Hoyt's willingness to put us in touch with those who could offer further assistance deserves mention, as does the extraordinary help given to us by Mrs. Mary Glidden. The latter provided insights into problems minorities face that could not have been gained otherwise.

Two persons who critiqued the sections on criminal procedure, Sheriff's Deputy John Walsh and State Police Sergeant Walter Purtell, deserve thanks not only for the spirit with which they approached the task, but also for the expertise they offered.

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The sine qua non were our editor, Mrs. Agnes Fox, and her husband, Les. Both bore with the principal writer through the gestation period and birth pains of this study and a dissertation earlier.

The principal writer also takes the unusual step of extending thanks to his collaborator, John Hopf, who despite not always gentle prodding, sometimes extraordinary demands, and without pay during a part of the research, never weakened in his resolve to do his best.

Extra special thanks go to Bruce and David, who not always willingly gave up a "full-time pitcher" and "sometimes father."

The humblest and most sincere thanks go to Bobbi, who served as a sounding board for every idea and who lived through the gnashing of teeth and an inordinate amount of griping with an understanding that only the most faithful wife can demonstrate.

that they have examined a vital area and have suggested a way to further even more profitable research. In other words, the researchers are not apologetic that they have not done more. They believe they have touched upon a subject worthy of study and have shed sufficient light to encourage positive, remedial, and preventive steps to be taken on behalf of a small, but important minority among us.

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PREFACE

In April, 1970, one of the researchers rather naively applied to the New York State Center for Migrant Studies for a grant to examine the "Courts and the Migrants." The reason for applying was a strong interest in criminal law and a considerably weaker and more vague interest in "migrants." But gradually and compellingly the focus became migrants, not law.

Each day meant increasing awareness of the plight of the migrant and led to a search for more evidence which tended to support what was becoming a bias. Strange, out-of-the-way roads, scents of prejudice among the justices of these smaller courts, and sections of newspapers containing "area news" drew the researchers' attention. In the researchers' minds, the original title was changed to "The Migrants and the Courts."

The product, regardless of the researchers' comprehension of the need for objectivity and scholarship, reflects an intensity of feeling. Certainly, the time during which the research was done and the report written was not a time for peaceful and rational reflection. A bomb killed a graduate researcher in a university laboratory, a war raged alternately in southeast Asia and threatened to erupt in the Middle East, and a television program dealing with the plight of the migrants tended to shock the sensitivities of many thinking persons. The researchers acknowledge that they are the products of their time and their society, but they also realize clearly the need for analysis of that same society. One starting place for analysis was the much-abused notion of law and order. The question that clearly arises in such analysis is the rationale for law, especially as it applies to a small, but important segment of American society: migrants, those weary travelers and providers of much of America's basic food needs.

Law is a two-edged sword, alternately protecting and repressing. Yet, it is not law--the written, authoritative, legitimate, and formal statements defining and offering direction to human behavior--that should be condemned. Such anthropomophism is self-defeating. Law, the entire body of rules of conduct that determines and maintains human relationships, is evolutionary. It depends upon persons who give birth and shape to it, who administer it, and who are assumed to live under it.

It is important to remember what one of the researchers has stated elsewhere:

> ...law reflects a way of life on which a society puts a premium on and which many members of that society base their expectations and actions. But, as societies and cultures differ, so do the expectations regarding the object of law. For Western society, particularly American, the ideal law is just. Justice is sought because it is believed that only just laws can command the respect, loyalty, and obedience of those subject to it. Further, justice is taken to mean employing nondiscriminatory rules responsive to all persons and guaranteeing due process in object and manner. Finally, these laws must be enforced in spite of contrary practices and beliefs.
>
> It is quite obvious that this ideal is not realized in

America today, particularly in the administration of criminal justice. The inconsistencies between the ideal and the real are too great to be ignored.[1]

These inconsistencies are most pronounced among the poor charged with committing criminal offenses. But concern for eliminating these inconsistencies and for righting numerous other wrongs has been focused largely on the urban poor. A significant number of rural poor continue to be ignored, despite their similarities to the urban poor. They face the threat of punishment by law through discriminatory arrest procedures, through inadequate release procedures, through the inability to retain counsel, and through lack of public awareness of their plight. Recent efforts to arouse public awareness to the plight of the migrant is commendable and may prove beneficial. But there remains the need for similar concern for their brethren in spirit, if not in fact; those who have left the migratory stream and who have tried to plant roots.

This report stems from a desire to arouse awareness. The focus is primarily upon the migratory farm worker, the "migrant," who is sustained by the tenuous hope that pursuing work wherever it leads him will somehow meet a need. Still, the focus is fairly sharp and does not pretend to paint a broad background. The concern is for the plight of the migrant in the justice courts of two, rather typical-appearing counties in western New York State. In doing so, at times some biting comments are made about persons and places. Largely, names are omitted because we do not believe that individuals are necessarily at fault. It is the nature of migratory labor and the justice courts that is of concern and is the source of the problem. When specifics are used, names or locations, it is public record and we are convinced that notice should be given. The Center funded a study; it does not and did not necessarily endorse the final product.

The report attempts to describe, rather than to quantify, and it may prove more ideographic than desired by some readers. It remains a reasonable attempt to identify some courts of law and to determine as closely as possible the incidence of migrant defendants in these courts. Further, it attempts to draw a profile of the migrant defendant, to determine the general characteristics of the criminal offenses with which these migrants are charged, and to ascertain the degree of representation by counsel. Finally, it attempts to summarize these data and to make recommendations about what measures can be taken on behalf of migrants to assure the ideal of equality under law. Only secondarily, does this study attempt to describe and analyze the migrant's environment, however compelling this might seem to others.

In truth, this report may appear to the reader to be more exploratory than definitive. Because of the dearth of such studies, this result may be inevitable. It is a first step, but the researchers remain confident

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[1] Wayne Mahood, "Defending the Poor: Counsel for Indigent Misdemeanor Defendants in the Rochester (New York) City Court, 1954-67," (unpublished Ph.D. dissertation, Department of Social Science, Syracuse University, 1969), pp. ii, iii.

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CHAPTER I

THE SCOPE AND METHOD OF THE STUDY

The Problem of the Migrants in the Courts

In the early hours of January 23, 1968, a fifty year old "illiterate," migratory farm worker living in the southeastern edge of the Elba Muck (Town of Clarendon, Orleans County) awoke from sleep suffering from bronchitis and lack of fire wood in his tiny shack. To obtain relief he left his cold shack dressed only in a "loose pair of dungarees" intending "to walk eight miles through deep snow into town to have a prescription filled."[1] At 6:30 a.m., freezing and desperate, the farm worker knocked on the door of a neighbor's house and asked for shelter. The neighbor, fearful because of the time of day and general undress of the migrant, refused his admittance to her house. When he sought to use her Chevrolet truck for shelter, the neighbor called the State Police, who arrested him.

The subsequent stories are confusing and contradictory. It is reported that the farm worker was taken to a doctor and then to a town justice on the northeastern edge of the county, who accepted a plea of guilty to criminal trespass in the third degree, a violation, and sentenced him to fifteen days in the County Jail in Albion. The dockets indicated the sentence to have been three days, not fifteen. The justice who tried the case originally claims he received the case only because the trooper could not locate a justice closer to the accused's residence. The sentence was based on the testimony of the trooper, because the farm worker did not deny any of the charge and did not explain the circumstances of his arrest. There was no one to aid the defendant because his wife was in the county jail serving a thirty day sentence for criminal assault, a felony.

The upshot was that the farm worker's fingers and toes were frostbitten and had to be amputated. Because of the treatment he received from the police and the town justice, suit was instituted against the State. Granting the man $100,000 State Court of Claims Judge J. Eugene Goddard summarized his feelings about what he considered appalling treatment of the migrant saying:

> Even the most helpless of our citizens, found in dire distress by an agent of the state, is entitled to better treatment than to be falsely accused, illegally tried, and callously sent off to jail because the trooper could not think of any other place where he could receive attention.[2]

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[1] The information was derived from a variety of sources, including the Rochester (New York) Democrat & Chronicle, May 12, 1970, an interview with the Town Justice of Carlton, personal observations of the relative locations of the towns and the defendant's residence, and an examination of the criminal dockets in the town.

[2] Rochester (New York) Democrat & Chronicle, May 12, 1970.

The rather hollow victory achieved by the farm worker is probably as atypical as the adversity he suffered is typical. The successful appellant in a sense, epitomizes the hardships as well as the characteristics of farm workers who enter the migrant stream. Black, illiterate, poor, he is generally ill-equipped to meet the demands of the larger culture in which he finds himself. Suffering from the conditions of poverty (living in a small, dirty shack behind a produce warehouse on an isolated road) he sought a rational solution to an irrationally structured situation. He was placed in double jeopardy--suffering from poverty and alienation, he was punished because of it. When he tried to comfort himself in a very human way, he was treated inhumanely. The punishment he suffered--immediately or proximately--could never be considered appropriate to the severity of the criminal offense with which he was charged. His real crime was to live in a culture (in this case a town) that, at best, tolerated him and others like him so long as they remained unobtrusive and off the welfare rolls. In the end, he has money, but he can no longer pursue the only occupation for which he is prepared. He has lost the "tools of his trade." He is now a virtual ward of the state, receiving a $100,000 welfare check.

Many questions can be asked. Has justice been served? Is there justice for seasonal farm workers in our courts? Imagine, if you will, what the fate of a true migrant, not a known resident, would have been. Or could it have been any worse? Is there a fate worse than losing one's fingers and toes?

The relative dearth of information prevents drawing any hard and fast conclusions about the plight of the seasonal farm worker in the courts. What little is known is highly descriptive and general. Only occasionally is much information made public. For example, a running verbal battle between the Division Director of the Camden (New Jersey) Regional Legal Services, Inc., and the New Jersey Public Defender's Office dramatically underscores the need for assistance to seasonal farm workers who come into contact with the criminal justice system. One illustrative case, noted by the Division Director, Max Rothman, involved a Spanish-speaking farm worker who sat in a county jail for more than two weeks after his preliminary hearing on a charge of illegal use of a deadly weapon without ever having been advised of his right to counsel.[1] Another Spanish-speaking farm worker spent more than six months in jail before coming to trial without the aid of counsel. Two other defendants spent 98 days in jail awaiting trial only to have their cases dismissed. Counsel did appear in the case, but only after languishing in jail 44 days. Their dismissal was alleged to have resulted from a desire to get the farm workers out of New Jersey jurisdiction and back to Florida rather than because of a desire to do justice. In still another case a 16 year old boy was held in jail for more than two weeks on vehicle charges without any attempt by probation officers or others to secure his release. Due to the services of the Camden office he was released to the custody of the Migrant Center and was subsequently fined $15.

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[1] Copy of letter from Max B. Rothman, Division Director of the Camden Legal Services, to Stanley C. Van Ness, Director of the New Jersey Public Defender's Office, May 21, 1970, made available to the researchers.

Whether these cases are representative of the nation or of New York State cannot be determined. It is the purpose of this study to examine and to report on two counties in New York. There is little doubt that seasonal farm workers, and indeed "resettled migrants" (who live year round), charged with committing criminal offenses frequently suffer injustice at the hands of those entrusted with administering the criminal justice system.

The fact that little is known about migrants in the courts does not mean that nothing has been done to assist them;[1] it simply means that virtually nothing has been written on the subject.[2] Yet, it is past time both for reporting and for acting, on what is at once a social problem and a legal one.

Social Problem

Seasonal farmworkers in New York State are exotic to the culture in which they find themselves at harvest time. Yet, they bring with them a subculture of their own. Unfortunately the attempt to mix the two helps to create the social problem that only recently has been the subject of intensive study[3] and legislative hearings.[4] The seasonal farm workers are not simply wanderers; they are the "uprooted"[1] in search of livelihoods doing what they know best. They are without the education or roots to live satisfactorily in their native habitats, which in the case of migrants to New York State, are primarily Florida, and to a lesser extent, Puerto Rico.

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[1] U.S. Congress, Economic Opportunity Act, 88th Cong., 2d Sess., 1964, Title III-B recognized farm workers, including the need for education, day care, sanitation, housing, and legal services. Such rural legal services as the California Rural Legal Assistance and the South Florida Migrant Legal Services Program have been cited by the United States Senate Subcommittee on Migratory Labor as "deserving of special mention." U.S. Senate Committee on Labor and Public Welfare, The Migratory Farm Labor Problem in the United States, Report No. 91-83, 91st Cong., 1st Sess., 1969, p. 48. In addition, the Camden (New Jersey) Regional Legal Services, Inc., and the Migrant Services Foundation, Inc., have been active in assisting seasonal farm workers in the courts. These services have general been limited to civil actions, however. Most states also attempt to provide for legal services to the poor through legal reference bureaus and public defenders. Voluntary legal services are available through legal aid bureaus or bar associations. They generally lack the commitment, comprehensiveness, and continuity that can be provided by tax supported and appointed lawyers.

[2] One notable exception is the report by the U.S. Commission on Civil Rights, The Mexican-Americans and the Administration of Justice in the Southwest (Washington: U.S. Government Printing Office, March 1970). A report forthcoming is U.S. Senate Subcommittee on the Migrant and Seasonal Farmworkers Powerlessness, Part 4, "Farmworker Legal Problems."

[3] A useful resumé of the studies that have been conducted and reported is James O. Schnur, A Synthesis of Current Research in Migrant Education (Las Cruces, New Mexico: Eric/Cress, New Mexico State University, 1970).

[4] Senate Subcommittee on Labor and Public Welfare Hearings on Migrant and Seasonal Farmworkers Powerlessness conducted from June 9, 1969 through April 15, 1970 and published in seven parts.

Psychiatrist Robert Coles after years of study of the migrants stresses the rootlessness and the isolation which both characterizes and stigmatizes them:

> I must to some extent repeat and repeat the essence of such migrancy (the wandering, the disapproval and ostracism, the extreme and unyielding poverty) because children learn that way, learn by repetition, learn by going through something ten times and a hundred times and a thousand times, until finally it is there, up in their minds in the form of what me and my kind call an "image," a "self-image," a notion, that is, of life's hurts and life's drawbacks, or life's calamities--which in this case are inescapable and relentless and unremitting.[2]

The culture deprivation and social fragmentation issue forth a whole style of life that results in a variety of "symptoms," according to Coles. These include heavy drinking before and after work to dull the senses, violence and hurtfulness toward one another, and a destructive carelessness toward property. For the most part this behavior is directed toward one another within the subculture and is therefore ignored by the larger society. But when it more directly affects others, as was the case with the seasonal farm worker seeking shelter in a white neighbor's truck, it becomes a legal problem which is the primary focus here.

Legal Problem

The legal problem becomes coincident with the social problem and is dealt with by the courts when certain typical actions occur. Generally these actions involve minor incidents and are classified as minor offenses by the criminal law. They are those against the public safety and order (disorderly conduct, harassment, public intoxication, and vagrancy), intra-family or intra-culture that bring public attention (assaults, family quarrels),[3] or offenses against property (petit larceny, criminal mischief). Homicides occur frequently enough to warrant attention, but not understanding from local law enforcement agencies and courts. Knifings, thefts,[1] and destruction of property between farm workers even when brought to the attention of law enforcement officials are commonly not subject to prosecution.[2] The reasons given tend to vary, but two reasons stand out: 1) unfamiliarity with public officialdom and criminal procedures and a guardedness around whites tends to discourage complaints by migrants, and 2) a feeling by police that arrests and prosecution are simply time wasted because complaintants seldom appear in court to prosecute and there is nothing that can be done for or about migrants.

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[1] Robert Coles, "Uprooted Children: The Early Life of Migrant Farm Workers," a manuscript read to the Senate Subcommittee on Migratory Labor, Monday, July 28, 1969 and reprinted in "The Migrant Subculture," Part 2 of the Senate Hearings, ibid.

[2] Ibid., p. 452.

[3] An example of a family quarrel that reached the courts involved the stabbing of a thirteen year old boy by his mother when the boy stepped between her and his father when the two were arguing. Each parent was charged with endangering the welfare of a minor and was required to post $100 bail. The case is pending. Rochester (New York) Times-Union, May 4, 1970.

Reports by agencies dealing with crime in our society bear out the fact that migratory farm workers are likely to be criminal offenders, as legally defined. The same characteristics that set them off from the larger society correlate with the national statistics on offenders in correctional institutions. For example, the President's Commission on Law Enforcement and Administration of Justice has stated:

> A large proportion come from backgrounds of poverty, and many are members of groups that suffer economic and social disadvantages. Material failure, then, in a culture firmly oriented toward material success, is the most common denominator of offenders. Some have been automatically excluded from economic and social opportunity; some have been disqualified by lack of native abilities...[3]

Thus, we find the poor doubly discriminated against. They suffer the social disadvantages which tend to lead them into the courts and these same disadvantages serve to handicap them in their defense. They generally cannot afford bail, however minor, cannot locate witnesses, are unable to work while jailed, and cannot retain counsel for their defense. The initial poverty creates a cycle of failure, deprivation, and arrests, which in turn vitiates the opportunity to alter their fate.

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[1] There are exceptions; one town justice related a story that is both humorous and pathetic. A migratory farm worker became provoked when another worker cooked and ate an animal that the former had previously caught. The hungry "thief" was subsequently attacked and knifed. The resulting commotion brought police who arrested both and took them before the justice. Both were convicted of assault and fined $15, which was paid by the "thief". Such hunger would not be unusual nor would the failure to share. A similar situation, described by a district attorney, stemmed from theft of a can of kerosene by one seasonal farm worker from another who was trying to prepare food for her children after a long day in the fields. Again the resort was to a knife, and the damage was much greater.

[2] In a matter of minutes a "resettled migrant" cited five examples of police inaction despite assaults and resulting deaths. Yet, she did not know what should have been done other than that some official notice should have been given.

[3] The Challenge of Crime in a Free Society (Washington: U.S. Government Printing Office, 1967), p. 160.

The Courts

The types of courts to which seasonal farm workers charged with criminal offenses are brought in the first instance are lower, or inferior courts. In the counties examined here, these courts are the town and village justice courts. This, in itself, is not surprising, because it has been estimated that "for three-quarters of our people the only opportunity to arrive at a personal conception of law, order, and justice lies in their experience before a...Magistrate."[1] But migrants more often than the general population appear before lay justices. Typically these justices are paid by fee against the parties in civil cases and on the basis of volume in criminal and motor vehicle cases. Often they are untrained (only 48 hours of legal education is required for most justices in New York State), ignorant of proper judicial procedure, and unable or unwilling to keep abreast of current developments in the law.

These lay justices also have been criticized because they "frequently serve as virtual arms of the police department, dispensing their own brand of justice wholesale."[2] Wright, a United States Circuit Court of Appeals Judge, is particularly outraged at the treatment accorded the poor and uncounseled in these courts. He argues that:

> Despite the presumption of innocence, the defendant in these police and magistrate courts is, prima facie, guilty. The burden is placed upon him to give a satisfactory answer to the question, "What have you got to say for yourself?" He is almost always uncounseled and sometimes he is not even informed of the charges against him until after the so-called trial.[3]

The deck is stacked further by the fact that:

> the choice of forum [the court in which a case originates] is generally resolved by the police. City or village police will generally go to the city court or police justice of their own jurisdiction; otherwise the choice is a matter of convenience or preference, in which the police are influenced by the expressed desires of the judges involved.[4]

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[1] John M. Murtagh, "Functions of Magistrates' Courts," New York City Lawyers Association Bar Bulletin, Vol. 10 (1953), p. 173.

[2] J. Skelly Wright, "The Courts Have Failed the Poor," The New York Times Magazine (March 9, 1969), p. 26.

[3] Ibid.

[4] State of New York Temporary State Commission on the Constitutional Convention, The Judiciary (New York: N.Y.S.T.S.C.C.C., Vol. 12, March 31, 1967), p. 270.

The defendant, then may find himself in a court in which the arresting officer believes justice consistent with his own notions will be done. The policeman who appears in a particular court regularly will feel that he has (and he probably does have) an advantage which cannot accrue to the defendant. In effect, he becomes as much a part of the court personnel as the justice is or a clerk in a larger court might be.

Another factor vitally affecting the outcomes of judicial proceedings is the justice himself. It is safe to say that as elected officials, justices necessarily are popular, politically reliable, and, not uncommonly, influential in the town in which elected. (For example, in Orleans County two of the town justices were influential growers.) Admittedly, many are friendly, concerned, interested individuals. But these are not the particular qualifications that should be demanded of judicial officers. Moreover, there is a general lack of decorum evident in the judicial proceedings of these lay judges. For example, "in Montana one justice reportedly tried a case while repairing an automobile; another justice disposed of a case while sitting on a tractor during a pause from plowing his field."[1] (The counties here offer similar examples: one justice will appear in gas station attendant's uniform, though he prefers to don a black robe for regular court sessions. Another justice will appear with blood-stained clothes coming directly from his slaughterhouse.)

While no claim is made that these illustrations are necessarily representative, they do underscore the lack of judicial mien which one should expect in a court of law where he risks the loss of life, liberty, or property.

These illustrations suggest a part of the problem referred to earlier: the lack of training. An auto mechanic (or car dealer, as is the case in one western New York town), a farmer (the case in more than one western New York town), a slaughterhouse owner, a school teacher, or a railroad worker does not and cannot have the time to study and to practice the law that is necessary to assure at least minimal standards of justice in criminal proceedings. The criminal and penal codes are too complex for amateurs, however dedicated.

Sentences in Inferior Courts

Defendants charged with committing felonies (jail sentences in excess of a year) may be brought before town and village justices or directly to the county courts. If brought before the justices, the defendant is informed of the charge (arraigned), bail is set, and a preliminary hearing to determine whether sufficient evidence exists to warrant trial is held. When the evidence warrants, the case is then transferred to the county court which has jurisdiction over the town and village courts. (The definitions of criminal offenses, jurisdiction of courts, and the criminal procedure are discussed in Chapter III.) The defendant generally is afforded more protections than in the justice courts because of the relative gravity of the charges and the severity of the punishments.

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[1] The President's Commission on Law Enforcement and Administration of Justice Task Force Report: The Courts (Washington: U.S. Government Printing Office, 1967), p. 35.

In the justice courts, despite the criminal code provisions and despite the generally lesser nature of the offenses, the punishments can be disproportionately severe. In a sense, no cases are "minor." By way of illustration, a common punishment in lower courts is the imposition of a fine on a convicted defendant. "A fine of $100 [or in the case of a migrant working for substandard wages, even of $15 or $25] would be nothing to a wealthy man, but it could be enormous to a poor one."[1] Consider the severity of the maximum punishment of 15 days for public intoxication in the case of the seasonal farm worker whose only source of income is his daily labor.

Thus, it can be seen that in any court of law often serious consequences attend the poor seasonal farm worker charged with committing criminal offenses. It cannot be assumed that because the offense is a "minor" one and the defendant is brought before a "minor" court the results will be any the less severe than in "major" offenses. The poor defendant frequently must remain in custody until trial (refer to the earlier cases of the Spanish-speaking defendants in New Jersey); unable to retain counsel, raise bail, or support a family, not to mention being unable to obtain evidence or witnesses on his behalf. Even if released from custody pending trial, his employment may be terminated by an employer unsympathetic with his need to be absent from work.

The social costs may be even greater. The seasonal farm worker arrested and detained, whether or not convicted, may lose rehabilitative potential. The feeling about law derived from that experience may reinforce the guarded and suspicious attitude toward the larger culture in which he must work. The migrant charged with an offense, brought before an unsympathetic prosecutor and magistrate and forced to defend himself unaided by counsel is likely to think of law only in a repressive sense. In fact, one report substantiates the repressive nature:

> When a migrant farm worker is indicted for any infraction of the law, because of ignorance or misunderstanding, the outcome often results in a denial of due process of law, a heavy fine, or instructions to leave and not return to the county. In some cases, the person indicted and fined is not even given reasonable time to pick up his belongings and family. He is escorted by a local officer of the law out of the county where the infraction took place.[2]

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[1] Lee Silverstein, Defense of the Poor in Criminal Cases in American State Courts (Chicago: American Bar Foundation, 1965), Vol. 1, p. 134.

[2] Report submitted to the Inter-Agency Migrant Workers' Committee of the New York State Division of Human Rights, which was located in the files of the New York State Center for Migrant Studies, State University College of New York, Geneseo, New York and bore no title, author, date, or publisher.

For those whose subculture does not adequately prepare them for living in the larger culture, let alone this side of the law, the feeling of oppression must be all the greater. Fearful of those outside of their subculture, subject to a legal system that is complicated in the extreme, and placed in jeopardy of life the seasonal worker cannot but be the source of pity. Like the black in the southern courts, the migrant enters what can be a racially exclusionary system because he comes from "another world."[1] And this situation is exacerbated by the assurance that initially at least he will be brought before an inadequately trained interpreter of the law.

Representation in the Courts

A potentially invaluable way out for the migrant is the assistance of counsel. In New York State since 1965, counsel has been required by legislation. In that year the New York State Legislature passed the so-called Anderson Bill, which with amendments in 1966 required the board of supervisors of each county and the governing body of the city in which a county is wholly contained to put into operation by December 1, 1965, a plan for representation of indigents charged with crimes.[2] A crime is any felony, misdemeanor, or violation of any local law or ordinance which is punishable by imprisonment. Counsel still is not required in cases involving traffic violations.

Counsel under this legislation means a public defender appointed pursuant to county law, a lawyer furnished by a private legal aid bureau designated by the county or city, the services of private counsel who are assigned on a rotation basis, or a combination of these alternatives.[3]

The objective of this legislation is to afford the poor the absolute protection of the law. This is particularly important to the seasonal farm worker, who because of low wages and unfamiliarity with his surroundings including the law, must have assistance in the courts. Whether the promise held out by this legislation is realized in the case of the seasonal farm worker is in part the subject of this study.

Definition of Terms

While the title is indicative of the scope of the study, for purposes of clarity the terms used herein are defined.

Criminal prosecutions refers to the operation of the *Code of Criminal Procedure* and the *Penal Law*[4] upon persons charged with committing a criminal offense[1] and brought before a court of law. The courts examined here are the town, village, and county courts. The specific nature of these courts will be reviewed in Chapter III, so it is sufficient to say that the focus in on what are called the "inferior courts." The justice courts to which the bulk of cases involving migrants are brought.

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[1] See an excellent discussion of this problem in Leon Friedman, ed., *Southern Justice* (Cleveland: World Publishing Co., 1967), p. 157.

[2] 722 New York County Law, C. 878 Laws of 1965, cc. 798, 761 Laws of 1966.

[3] 722 New York County Law, C. 878 Laws of 1965.

[4] *Code of Criminal Procedure* of the State of New York, 1965 supplement (Rochester, New York: The Lawyers Co-Operative Publishing Co., 1965).

Migratory farm workers or "migrants" are legally defined as individuals "whose primary employment is in agriculture, as defined in section 3121 (g) of Title 26, on a seasonal or other temporary basis".[2] Agricultural labor included persons in the employ of another; involved in the production or harvesting of agricultural commodities; handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering; but not performing services in connection with commercial canning or commercial freezing. Also, it appears that residency in one area for up to five years does not preclude migratory status.[3] The term "resettled migrant", while no more helpful or less derogatory, is often used to refer to the migratory farm worker who leaves the migrant stream and takes up year round residence. It is difficult to define precisely the migratory farm worker in practice owing to lack of agreement among persons living in the counties studied. For example, in one town a justice claims there are no "migrants" in his town--all have lived there for five years or more. The other justice in that town continues to talk of migrants, because he feels that differential treatment is accorded seasonal farm workers however long they reside in the town. The latter appears more correct, but does not help in determining who are migrants in the criminal dockets. The most realistic definition of the "migrant" and the one used here, is an operational one. A migrant is a person who is so regarded by the larger community because of a life style that he demonstrates. The docket data used here reflect the beliefs of the authorities that the defendants were "migrants" and were so identified, regardless of the length of residence and possibly even of the exact occupation.

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[1] While the term "criminal offense" appears unnecessarily vague, it circumvents the laborious task of spelling out the exact definition of each type of charge. By the Penal Law of New York State 52(2) a misdemeanor is "other than a felony, and a felony is a crime which is or may be punishable by: 1. Death; or, 2. Imprisonment in a state prison." Case law is scarcely more helpful: "It is not the mere name of a crime, but the punishment therefor, that characterizes it," People ex rel. Cosgriff v. Craig, 195 NY 190, 88 NE 38 (1909). "The fundamental distinction between felonies and misdemeanors rests with the penalty and the power of imprisonment." People v. Bellinger, 269 NY 265, 199 NE,213 (1935). "There is a third class of offenses which are neither felonies nor misdemeanors, but petty offenses triable summarily by a migistrate. Within this category are persons charged with intoxication, vagrancy, disorderly persons, etc.; also many cases of violation of municipal ordinances. The minor offenses, below the grade of misdemeanors, have always constituted a class by themselves." Cooley v. Wilder, 234 AD, 256, 255 S 218 (1932). Another category since 1967 is "violations," which are punished by fines and imprisonment for 15 days or less, 55.10 (3) McKinney's Consolidated Laws of New York Revised Penal Law (Brooklyn: Edward Thompson Co., 1967). Still another category is used in justice courts--indictable and non-indictable misdemeanors. The distinction is based on a defendant's decision to have his case go to a grand jury(and possible indictment) rather than tried in a justice court.

Traffic cases ("V&T") are omitted in this study, though they may be felonies, misdemeanors, or violations and despite the fact that sentences may be severe. One reason is that seasonal farm workers either are not charged with such offenses in some areas because of an unwritten practice of the police or justices may refer the cases to crew leaders and growers. These cases will not show up on the dockets. Another reason is personal--the extensive number of traffic offenses in the dockets virtually obviates completion of the study.

[2] Title 7, Agriculture, Section 2042, U.S. Code.

[3] Title 20, Education, Section 1107a (2) which reads, "migratory children of migratory agricultural workers' shall be deemed to continue to refer to such children for a period not in excess of five years, during which they

Two Western New York Counties refers to the choice to limit the study to two areas distinguishable in terms of population, land area, geographical location, and agricultural products, but roughly comparable in terms of their relatively large migrant populations. The counties are Orleans and Steuben, which may be found on the map in Chapter II, page 18 infra. Orleans, bordering on Lake Ontario with only ten towns (local governmental agencies outside villages but within the county) produces large amounts of fruit crops and is relatively small in terms of land area. Steuben, bordering on the Commonwealth of Pennsylvania, has approximately three times the population, land area, and towns of Orleans. It devotes large amounts of land primarily to vegetable crops (potatoes are most common). Both are within one judicial department, which implies at least some degree of consistency of criminal law administration.

Legal Services Available, as used here, includes not only counsel (lawyers who voluntarily, by assignment, or by judicial appointment defend persons accused of criminal offenses) but also social workers and others who devote at least a part of their time to assisting migrants charged with committing criminal offenses. For the most part the term will refer to lawyers.

Description of the Study

While the Purpose of this study is to obtain both quantitative and qualitative data regarding the operation of the criminal law upon seasonal farm workers, the design does not attempt to follow the lines of a research project, as strictly construed. For example, no hypotheses are stated. Insufficient data exist to formulate hypotheses suitable for rigorous research and testing. Here the object is to describe the status of the seasonal farm worker who becomes the focus of the judicial process and to note the implications thereof.

Even the uninitiated could hypothesize that "criminal law as it relates to migrants [is] an instrument of oppression, " as one lawyer familiar with the problem has suggested, or that any counsel is better than none, or that retained counsel is superior to assigned counsel, or that arrest and incarceration alone exact a heavy toll on the migrant defendant regardless of the

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reside in the area served by the local educational agency." Presumably the parents of the children fall in the same class.

outcome of the trial. But these hunches are no more applicable to the migratory farm worker than they would be to the poor anywhere. Moreover, these issues have been raised and discussed often.[1] Instead, the present study, intended to be suggestive more than definitive, should facilitate a more comprehensive examination of the problem of the migrant in the courts.

Objectives

The objectives of the study were:

1. To identify and to survey the appropriate courts and court records and to estimate (exact information is virtually impossible) the total number of seasonal farm workers (migrants) charged with criminal offenses in these courts per year.

2. To draw a profile of the migrant defendant in these courts. (The idea is that before one can suggest ways to help migrants charged with criminal offenses it is necessary to know precisely who is being charged and prosecuted most frequently.

3. To determine the general characteristics of the criminal offenses with which migrants are charged, including the types of charges brought, release and recognizance procedures, final dispositions of charges, and the length of time of disposition. (Again institution of preventive measures is dependent upon knowledge of the charges and consequences.)

4. To ascertain the number and percentage of migrants represented by counsel, the type of counsel and experience, the types of charges defended, the release and recognizance procedures, the final dispositions of charges, and the length of time of dispositions. (What is the effect of counsel? Is it better than nothing? Should there be other assistance?)

5. To compare the differences in representation by counsel in terms of indigency determination, types of crimes and offenses represented, plea negotiation, dispositions of charges, and money spent per case for representation.

6. To summarize and to analyze the data collected regarding the migrant and the courts and to make recommendations on the basis of these data. (Remedial or preventive measures must depend on what, in fact, occurs, not simply upon guesses, however much derived from personal observation.)

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[1] See, for example, Friedman, Southern Justice, 1967; President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, 1967; Abraham S. Blumberg, "Lawyers with Convictions," Trans-action (July/August, 1967), Vol. 4, No. 8, pp. 18-24); David Sudnow, "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office," Social Problems (Winter, 1965), Vol. 12, No. 3, pp. 255-276; and Wright, "The Courts Have Failed the Poor," The New York Times Magazine (March 9, 1969), pp. 26-110.

Research Procedures

This study required the collection and analysis of data from two public defender offices, from the two county courts' criminal dockets, and from eighteen town and village justice court criminal dockets regarding every known migrant,[1] together with a sampling of cases of other defendants on the criminal dockets for the calendar years 1968 and 1969. Although two counties are specified, only the eighteen town and village courts were, in fact, studied, because the available evidence suggests the bulk of cases involving migrants occurred in these particular courts. That is, justices, defenders, and district attorneys interviewed advised the researchers to ignore the other towns and an examination of some dockets in the towns so designated substantiated the advice. The two years chosen reflect the need for consistency and recency of data, because the Penal Law revisions negate comparative data before September 1, 1967 and records get "lost" after much time.

For background and description of migrants and the courts the specific data sought were: 1) geographical area and jurisdiction; 2) types of courts; 3) court organization and procedures; 4) age, sex, marital status of the ethnic group, whenever obtainable.

The specific data regarding the description of charges sought were: 1) types of charges; 2) number of defendants, including those represented by counsel per year, totals, and arithmetic means; 3) final dispositions of charges; 4) release and recognizance procedures; and 5) length of time from arrest to final disposition of charges.

For counsel the specific data sought were: 1) types of counsel and criminal law experience; 2) standards for indigency determination and persons making the determination; 3) whether appointment by the court or bar association or retention; 4) the stage of the trial when counsel first appeared; 5) the number of days spent by counsel to final disposition and the arithmetic mean number of days; and 6) the amount of money spent per defendant for the defenders' services.

Sources

Sources for data were: 1) Annual Reports of the Judicial Conference of the State of New York; 2) Annual reports of the public defenders to the Judicial Conference; 3) memoranda in the public defender files; 4) Orleans and Steuben County Court criminal dockets for felonies, indictable misdemeanors, and appeals; 5) town and village court criminal dockets for non-indictable misdemeanors, offenses, and violations; interviews with the defenders, justices, court and town clerks, retained counsel, growers, crew leaders, migrants, and migrant ministers; 6) reports and records of hearings by governmental and quasi-governmental agencies concerned with migratory labor; and 7) personal observations of the courtroom proceedings and court personnel.

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[1] The researchers had to rely upon the justices, the district attorneys or police as to which defendants in the dockets were migrants--a not entirely satisfactory circumstance.

Sampling Design

Because of the relatively large land area, the number of courts, of cases, and the time limitations, it was necessary to obtain from the justice court criminal dockets a sample of cases not involving migrants. The cases were used for purposes of comparison. Originally it was decided to try to obtain a sample size of 400, representing 100 cases per county per year. Thirteen cases per town were to be randomly sampled from Steuben County and fifteen cases were to be randomly sampled from Orleans County. The towns selected were those reporting migrant populations and suggested by town justices and others interviewed. As it turned out, some town justice dockets reported less than the number sought, Thus, where possible, all cases not involving migrants were taken, and in all other courts fifteen cases were taken. The result was greater accuracy, but again, suggests a study is not a strictly construed research project.

Interviews and Questionaires

Interviews were conducted whenever and wherever possible with defenders, justices, court clerks, private attorneys, growers, crew leaders, migrants, and others concerned with migrants.

Limitations

As with any study, there were limitations. A common one, however serious and irritating, was the need for more accurate and consistent reporting of criminal justice statistics. This applies to reporting techniques and requirements of virtually all judicial departments.[1] Town and village justices are required to buy specified docket books and must report to the State Comptroller monthly and to the town board of supervisors for examination and audit as often as required. (Section 31, Public Officials Law.) This does not guarantee accuracy of reporting. For example, one justice's dockets were incomplete as to disposition of cases, dates, addresses and ages of defendants and were unsigned on occasion. Another's were so incomplete as to be almost useless. Yet, they were accepted upon audit.

Similar difficulty was encountered in obtaining data from the public defenders. One defender failed to answer letters and only persistence proved useful. The other claimed moves from one office to another, lack of systematic filing system, and the cryptic nature of his writing make his records useless to the researchers.

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[1] The reports of the New York State Judicial Conference are representative and illustrative. Reporting years are sometimes calendar years and sometimes judicial years. Some reporting is done by the courts directly, some by the Department of Correction, some by the justices, and some by court clerks. Inconsistent reporting can be explained only in part by changing requirements of the Judicial Conference and Departments.

A third limitation was reflected by the large number of seasonal farm workers and courts in Western New York alone. Clifford E. Butterer's report, "A Census of Migrants in Eight Western New York State Counties in 1968" (Geneseo: New York State Center for Migrant Studies, June 1969) shows 7,482 migrants living in these counties in the latter half of the year.[1] Moreover, there were approximately 106,786 criminal court dispositions reported in these eight counties and six others that constitute western New York State.[2] The scope of the study had to be limited to a workable size for a summer research and reporting period.

Another limitation was the necessity for staying within both a reasonable driving distance and within the same judicial department. Driving, contacting legal personnel, and securing enough time to survey dockets were major problems throughout because of the dispersion of the courts and because of the necessity for laying the groundwork in what many regard as a very sensitive area for research. The decision to stay within the Fourth Judicial Department reflects the desire for consistency. While there is a unified court system in New York State (see Chapter II _infra_), differences do exist because of different judicial personnel and judicial department administrators. Courts within the same judicial department tend toward similar practices and allow for easier comparison.

An obvious limitation upon the conduct of this study was the difficulty in contacting justices and in gaining their confidence. Generally justices were considerate and took time to point out to the researchers specifically which defendants were migrants, thereby advancing the conduct and accuracy of the study. However reluctance was demonstrated by some justices. One justice could not see any point to the study, because migrants cannot be helped anyway. Another simply claimed no need to see his dockets since he had not handled any cases involving migrants. Dockets of a retired justice were put away in a vault which was tantamount to burial forever.

As with many researchers, the claim of lack of time is made here. A four month period to conduct and report such a study is obviously restrictive.

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[1] Again inconsistency of reporting exists here as well as in the courts. The United States Senate Subcommittee on Migratory Labor _The Migratory Farm Labor Problem in the United States_, 91st Cong., 1st Sess., 1969, p. 123 reports that in these same eight counties there were 10,693 migrants. The subcommittee's source was the Migrant Health Unit of the Public Health Service, Dept. of Health, Education and Welfare.

[2] Extrapolated from the State of New York, _Annual Report of the Judicial Conference of the State of New York_, Vol. 12, 1967, pp. 450, 452, 453. The need to extrapolate once more reflects inconsistency in judicial reporting. Volumes 13 and 14 do not show a breakdown of cases in inferior courts (city, village, and town), as did all the other volumes except 2 and 3.

Making personal contacts alone was extremely time-consuming. Handling statistics took a significantly large amount of time, as well. In part, this limitation reflects the researchers' personal situations and the nature of the study.

While it may appear to the reader that the limitations noted suggest arbitrariness and rationalization on the part of the researchers, in fact, the scope of the study is realistic enough to permit conclusions on the basis of the best available evidence. Moreover, this is virtually uncharted territory. The foregoing are simply the "givens," the limits within which the study was conducted. The point is to determine which and how many migrants are defendants and how they fare in the selected courts within the social values underlying the system itself.

CHAPTER II

THE SETTING FOR THE STUDY

Orleans and Steuben Counties

Orleans and Steuben Counties are located in Western New York State (see Figure 1 next page), and, as is common in large, diverse states, their residents suffer certain disadvantages. As "upstaters" they lie outside the New York City-Albany political axis. But more importantly, they lack the socio-economic status accorded "downstaters." The result is a kind of "poor cousin" relationship, requiring a compensatory identity. Such an identity has tended to be based upon assumed geographic and economic advantages, including lakes (The Finger Lakes, Chautauqua, Ontario), farm land (vegetables, fruits, wine, and dairy), and home-based industries in which great pride can be taken.

A clear example of this pride is demonstrated by the residents of Monroe County and Rochester, its largest city ("the Flower City"). Monroe County likes to think of itself as the "pacesetter" for upstate New York, extending its influence and affluence throughout Western New York State. This is particularly significant for neighboring counties, like Orleans, and for counties more distant, like Steuben. The rural counties surrounding Monroe tend to be subordinated to it, which creates a situation analogous to the upstate-downstate schism. Monroe County, then, serves as a bench mark against which to examine the statuses of Orleans and Steuben Counties and the effects on the subjects of this study, the migrants in these counties.

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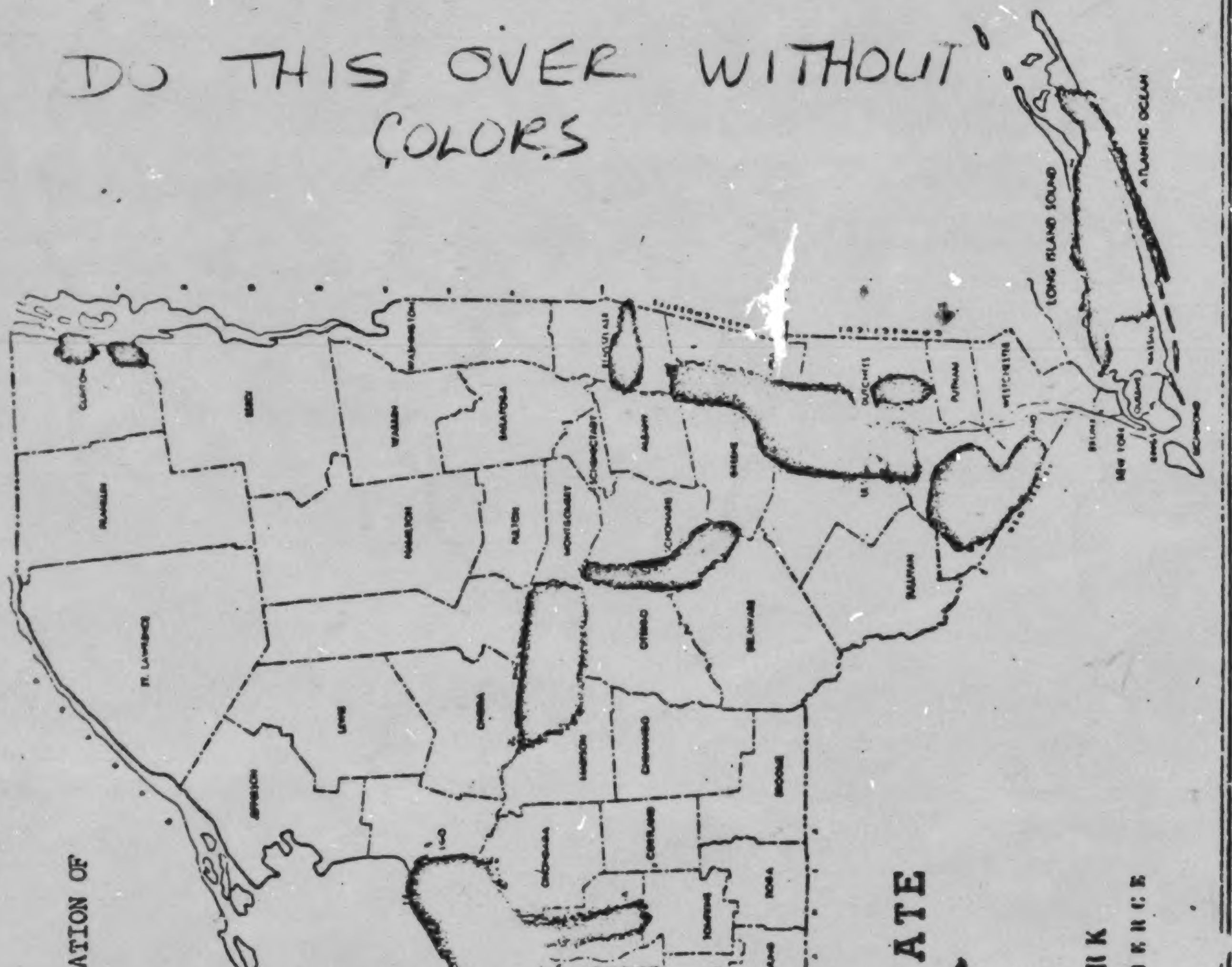
FIGURE 1. LOCATION OF MIGRANTS IN NEW YORK STATE

DO THIS OVER WITHOUT COLORS


LAKE ONTARIO
LAKE ERIE
LONG ISLAND SOUND
ATLANTIC OCEAN
CLINTON
ESSEX
FRANKLIN
ST. LAWRENCE
JEFFERSON
LEWIS
HAMILTON
WARREN
WASHINGTON
SARATOGA
FULTON
MONTGOMERY
ALBANY
GREENE
DUTCHESS
PUTNAM
WESTCHESTER
SULLIVAN
DELAWARE
OTSEGO
CHENANGO
MADISON
BROOME
CORTLAND
TIOGA
ONONDAGA
TOMPKINS
SCHUYLER
CHEMUNG
ALLEGANY
CATTARAUGUS
GENESEE
WYOMING
NIAGARA
MONROE
ONTARIO
NASSAU
BRONX
NEW YORK
NEW YORK STATE
COUNTIES
Published by
STATE OF NEW YORK
DEPARTMENT OF COMMERCE

KEY

SHADED AREAS INDICATE HIGH CONCENTRATION OF MIGRANT POPULATION IN NEW YORK STATE

Orleans County- ~~red~~

Steuben County- ~~brown~~

Vital Statistics

Land Area

Orleans County, despite its proximity to heavily populated Monroe County, is distinguished by its relative poverty and rural agrarian nature. (See Table I on next page). Most of its inhabitants either live on income derived from nearness to Rochester or from farming the flat, fertile farmland. It is a relatively small county with only 396 square miles bordering on Lake Ontario.[1] In the northern part of the county are the Towns of Yates, Carlton and Kendall, all of which have significant numbers of migrants. Within the central region are Ridgeway, Gaines, Murray, and Albion, the county seat. These Towns also have migrant laborers. Within the three southernmost Towns, Shelby, Carre, Clarendon, there is only one migrant camp which is located in Clarendon. (See Figure 2 on page 21). However, a Clarendon town justice assured us that these were not migrants because they had settled there for more than five years.[2]

Steuben County is south of Monroe County on the Pennsylvania border. In comparison with other counties in Western New York, Steuben, with its 1,410 square miles, is one of the larger counties.[3] Although there are thirty-two towns in Steuben, only seven have significant numbers of migrants. The migrants are concentrated in the northern part which includes the Towns of Wayland, Cohocton, Prattsburg, Dansville, Avoca, Wheeler and Fremont. (See Figure 3 on page 22)

Population

Metropolitan Monroe County with 586,389 people ranks forty-ninth in population within the U.S. By comparison rural Orleans and Steuben Counties are considerably smaller. Orleans, Monroe's immediate neighbor to the west, had a population of 34,159 in 1960 and preliminary reports for 1970 indicate an increase of 2,678.[4] Steuben with almost four times the land area of Orleans, more than twice the size of Monroe County and three times the population of Orleans,[5] has only one sixth the number of people as Monroe.

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[1] U.S. Department of Commerce, County and City Data Book 1967, (Washington, 1967), p. 252.

[2] These individuals are sometimes referred to as "resettled migrants" which signifies they may no longer perform seasonal farmwork and have lived there year around for greater than five years.

[3] County and City Data Book 1967 (Washington, 1967) p. 252.

[4] All Preliminary reports for 1970 from Rochester (New York) Times-Union, June 30, 1970.

[5] County and City Data Book 1967 (Washington, 1967), p. 252.

TABLE I

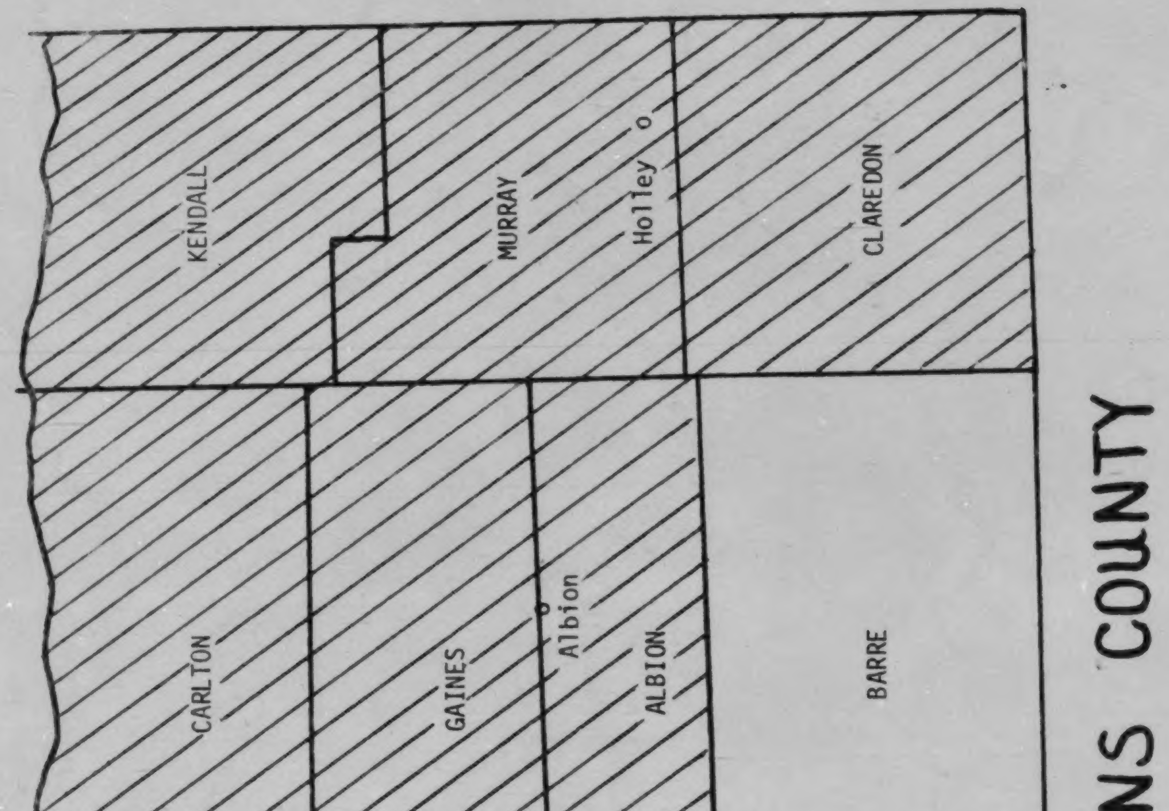
STATISTICS OF MONROE, ORLEANS AND STEUBEN COUNTIES

		Monroe	Orleans	Steuben
Population and Land Area 1960	Total Pop.	586,389	34,159	97,691
	U.S. Pop. Rank	49	879	311
	Land Area Sq. Miles	675	396	1,410
Population Change 1950-1960	Total	20.3%	14.5%	6.8%
	Total 1970 Prelim.	17.01%	9.3%	.99%
	Net Migration	6.2%	3.8%	-6.6%
Population Character. 1960	Urban	86.7%	34.7%	43.5%
	Negro	4.1%	4.3%	.8%
1959 Income of Families (1960)	Median Income	$7,147	$5,608	$5,607
	Under $3,000	10.5%	18.5%	17.9%
	$10,000 & over	23.3%	12.9%	11.6%
Bank Assets	in $1,000	$1,557,560	$36,489	$109,557

SOURCE: *County and City Data Book 1967* (Washington, 1967) p. 252. Preliminary Reports for 1970 from Rochester (New York) *Times-Union*, June 30, 1970.

Figure 2

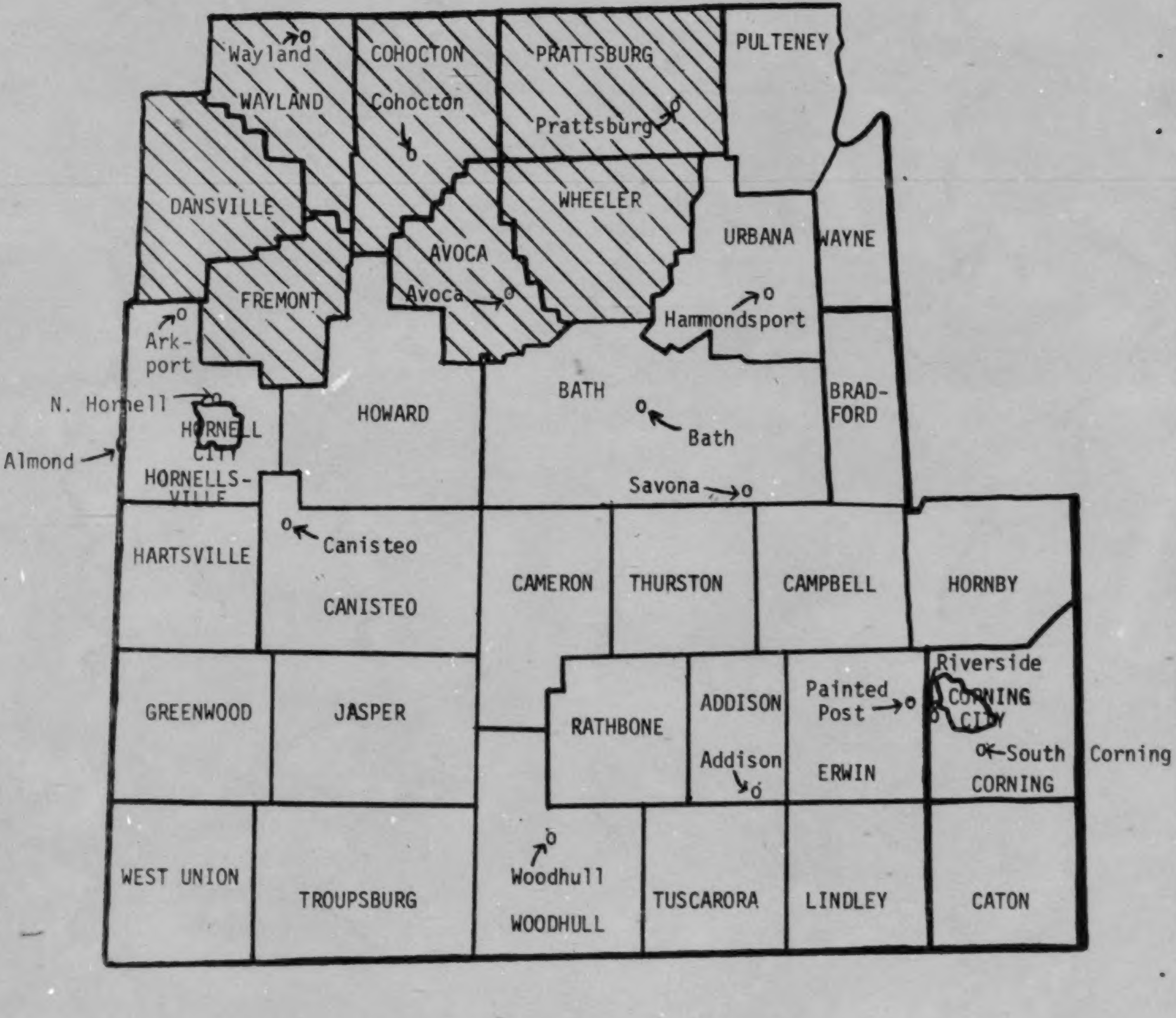
LOCATION OF MIGRANTS IN ORLEANS COUNTY


KENDALL
MURRAY
Holley
CLAREDON
CARLTON
GAINES
Albion
ALBION
BARRE
YATES
Lyodonville
RIDGEWAY
Medina
SHELBY
ORLEANS COUNTY

SOURCE: Adapted from Dept. of Rural Sociology, The People of New York 1900-1960, Bulletin No. 62: 34-44 (Ithaca, New York: Cornell University), p.7.

Figure 3

LOCATION OF MIGRANTS IN STEUBEN COUNTY


Wayland
WAYLAND
COHOCTON
Cohocton
PRATTSBURG
Prattsburg
PULTENEY
DANSVILLE
WHEELER
URBANA
WAYNE
AVOCA
Avoca
FREMONT
Hammondsport
Ark-
port
N. Hornell
HORNELL
CITY
Almond
HORNELLS-
VILLE
HOWARD
BATH
Bath
BRAD-
FORD
Savona
HARTSVILLE
Canisteo
CANISTEO
CAMERON
THURSTON
CAMPBELL
HORNBY
Riverside
CORNING
CITY
Painted
Post
GREENWOOD
JASPER
RATHBONE
ADDISON
Addison
ERWIN
South
Corning
CORNING
WEST UNION
TROUPSBURG
Woodhull
WOODHULL
TUSCARORA
LINDLEY
CATON

STEUBEN COUNTY

SOURCE: Adapted from Dept. of Rural Sociology, The People of New York 1900-1960, Bulletin No. 62:46 (Ithaca, New York: Cornell University), p.7.

Between 1950 and 1960, the population of Orleans County increased 15.5% but preliminary reports for 1970 indicate only a 9.3% increase while Monroe County had an increase of 20.3%. However, Steuben County had only an increase of 6.8%, and preliminary reports for 1970, indicate only a .99% increase. These figures represent increasing out-migration. Between 1950 and 1960 it is reported that 6.6% of the inhabitants of Steuben moved elsewhere. By contrast, Orleans and Monroe had positive net migration resulting in increases in population.[1]

Of the three counties, Monroe understandably has the highest percentage of urban dwellers at 86.7%. Rural Orleans and Steuben counties have much lower percentages of city dwellers, 34.7% and 43.5% respectively. The percentage of blacks in Monroe and Orleans are 4.5% and 4.2% respectively, while in Steuben County only .9% of the population is black.[2] The greatest concentration of blacks is within the urban complex. There are more opportunities for employment near and in cities, and there is probably less chance for a black person to feel lost in a sea of whites. Since only .9% of Steuben's population is black, there is probably an even greater feeling of subordination to the white power structure.

Industry and Income

Agriculture and small industries constitute the major employers of the people of Orleans and Steuben. Significant numbers of individuals from both counties travel to Monroe to work at such home-based industries as Eastman Kodak, Hickey-Freeman and the Xerox Corporation. Because of the large industries the bank assets in 1964 reached $1,557,560,000 in Monroe County. This number far exceeds that of Orleans ($36,489,000) and Steuben ($109,557,000).[3]

The affluence in Monroe County is illustrated by the relatively high per capita income. In 1964, the per capita income was $3,223.00 which is not only considerably greater than Steuben ($2,265.50) and Orleans ($2,265.40), but is greater than the national average. The median income for Monroe in 1960 was $7,147, which increased to $10,642 in 1964. By contrast, the median income in Orleans and Steuben counties in 1964 was approximately the same as in Monroe in 1960.[4]

Description of the Seasonal Farmworker

> Large scale migration of farmworkers has come to characterize the American agricultural scene. Every year farmworkers and their families numbering more than 1 million leave their home counties to fill the continuing and fluctuating seasonal

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[1] Ibid.

[2] Ibid.

[3] County and City Data Book 1967 (Washington, 1967), p. 253.

[4] Per capita and Median incomes of Orleans and Steuben for 1964 were extrapolated from ibid.

> demand for farm labor that is so vitally important in our society.[1]

Although seasonal farmworkers (migrants) appear to remain vital to agricultural production, they have been grossly neglected by our society. Until recently, the problems of migrants have been largely ignored. The belief in equality for all has come to mean equality for some. The result is that migrants are characterized by the lowest wage of all workers, poor housing, little education, illiteracy and the symptoms of a social pathology.

Typically, the amount of farm work available in a home county is limited, requiring migration. The New York State Division of Human Rights report submitted by Robert J. Magnum stressed that "migrant farmworkers are forced to travel simply because their hometown failed to provide them with the opportunity to obtain basic personal family requirements."[2]

While appearing redundant, it must be emphasized that what distinguished migrants from virtually all other workers is the continuing practice of following work based on the seasonal demands. The migrations within the U.S. move northward from the states along the southern border and follow three major routes. The main stream starts in the spring, travels north and west from Texas, and covers most of the North Central, Mountain, and Pacific Coast states before the season ends in December. A second stream flows from the Southeastern states into Florida for the winter citrus and vegetables harvests. During the spring and summer the same stream moves northward through the East Coast states. The third major route starts in Southern California and continues northward through the Pacific Coast states.

In 1967, there were 3.1 million persons performing farm work for wages at some time. Of that number 276,000 or nine per cent, had left their home county beyond normal commuting to work.[3] These migratory farm workers were a small but important part of the total farm wage force in the U.S.

In actuality seasonal farm workers differ little in age and sex from other non-migrant farmworkers. They are young. In 1967, half the migrant workers in the U.S. were under twenty-five years of age, and one-fourth were from age fourteen to seventeen. By contrast, in the nation's total labor force only one-fifth were under twenty-five years.[4]

Within the United States, migrants form three major ethnic groups. The first group consists of predominantly white English-speaking migrants from the south and the Spanish-speaking Americans from the central and

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[1] Senate Committee on Labor and Public Welfare, The Migratory Farm Labor Problem in the United States, 1969, p. 1.

[2] Report to the Inter-Agency Migrant Workers' Committee.

[3] Senate Committee on Labor and Public Welfare, The Migratory Farm Labor Problem in the United States, 1969, p. 3.

[4] Ibid., p. 5.

and western areas of the country. Mexican-Americans make up the second group. In 1960, 103,000 of the 261,000 Mexican-American farmworkers did some migrant farmwork. Finally, there are the blacks who move from Florida seeking work along the Atlantic Coast states.[1]

Despite recent imporovements in the wages of migrants, they remain at the bottom of the wage bracket. From 1965 to 1968, their wages increased from $1.14 per hour to $1.43 per hour. However, there are still thirteen states in which the average wages are below the present minimum for agricultural workers. Migrants are plagued by unsteady employment. In 1967, the average migrant was employed for only eighty-five days at about $10.35 a day, for a total of $922 that year.[2] Incidentally, by traveling the migrant did not make any more money than he would have if he had stayed home.

In addition and as a result of their migratory status migrants suffer in other ways:

First, they lose the advantage of living in permanent residences.

Second, their housing is often of extremely sub-standard quality. Although recently some states have enacted laws setting standards for labor camps, it is a small step.

Third, their sanitary and health facilities are woefully inadequate, as a result of almost criminal neglect.

Last, the education of the children has lacked the continuity essential to academic growth. A uniform transfer record form has recently been developed which is designed to help fill the continuity gap.

The migrants "know their" _viz._, which houses to seek, stores and bars to patronize, and where to obtain services.[3] The migrant social life commonly consists of small gatherings with some dancing and often considerable drinking. There are no community activities or movie houses. There are no social clubs, as such. Dr. Robert Coles describes the situation in this way:

> The extreme poverty, the cultural deprivation and the social fragmentation, in sum the uprootedness which characterizes their lives, falls not suddenly upon them but is a constant fact of life from birth to death, summoning, therefore, a whole style of life, a full range of adaptive maneuvers.[4]

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[1] _Ibid._

[2] _Ibid._, p. 54.

[3] Senate Committee on Labor and Public Welfare, _The Migratory Farm Labor Problem in the U.S._, 1969, p. 13, excerpted from Robert Coles, "The Migratory Farmer" (Atlanta, Georgia: Southern Regional Council, 1965).

[4] _Ibid._, p. 14.

In order to adapt, then, migrants turn the isolation and hopelessness of life inward. As a result they are very close to their immediate family and children, but look upon outsiders with suspicion. A migrant child appears fairly content in his early years, as the discipline is extremely lax. However, the initial happiness is challenged and destroyed by a plethora of threats. It is at this time that the child begins to learn to be suspicious of outsiders and to channel hostilities toward them. Furthermore, the child begins to engender the feelings of inadequacy and hopelessness that follow him throughout life. These children go directly into adulthood with little opportunity to enjoy the generally carefree days permitted youth in the larger society. The result frequently is an individual who will drink heavily and who may occasionally destroy his home or possessions because of the stress and hostilities held within. The somewhat schizoid personality which occurs is described by Coles:

> With their children and husbands or wives they will often be warm, open, and smiling. At work, with strangers, and often with one and another while traveling or even walking the streets they are guarded, suspicious, shrewdly silent,...[1]

The Migrants in Orleans and Steuben Counties

The Origins of Migratory Labor

While for years the employment of seasonal farm workers has been common to both Orleans and Steuben Counties, the large scale use of migrant labor is fairly recent. This development stems from a significant increase in the size of farms, greater mechanization, and what has come to be called "agribusiness." In Orleans County the first sizeable influx of migrant labor occurred about 1960. Reportedly there were 4,000 working in the fields and "several hundred others employed in food processing plants."[2] The migrants were attracted by the promise of work in and around Duffy-Mott Foods, Hunt-Wesson, Birds Eye, and Heinz. These industries served primarily as processors, contracting with individual growers in the area for fruits and vegetables. Migrants were thus important to the operation of these plants and the growers upon whom the plants were dependent.

Beginning earlier, but particularly noticeable in 1968 and 1969 were some severe dislocations because of a combination of factors, including fluctuating prices and increased competition. Hunt-Wesson, Heinz, and Birds Eye found economically more suitable locations and closed their plants in the Albion and Medina areas. A direct consequence was the decreased need for migratory labor. (Another effect is evidenced by the abandoned and bare store fronts on Main Street, Albion.)

While these four industries were in full production, many camps, particularly those in the northern part of the county were considered real "trouble spots." As one justice stated, the migrants "lived like animals." Increasingly, public concern caused state public health officers to order the closing of many units, which, combined with the closing of the plants, has had a serious impact on the migrants. Many migrants who had been lured into the county by the attraction of full-time work were left without either the income or the training to do more than survive. Others who had travelled up here for years had to seek out other employers or leave the migrant stream. The situation today, less than a year after the closing of three large plants, remains unchanged.

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[1] Ibid., p. 17.

[2] Rochester (New York) Times-Union, September 11, 1970, which reports a survey by James Byrdett, farm recruiter for the State Employment Service office in Albion.

The employment of migratory labor in Steuben County follows a similar pattern. Around 1940 potato growers from Long Island, seeking more land and escape from the fungus that was starting to affect their crops, began to relocate in Steuben County. Within approximately eight years the typical small farms ranging from one hundred to two hundred acres were replaced by farms of four hundred to a thousand or more acres. These large farms, like that of Schuler's, a local potato chip manufacturer, required greater numbers of workers than available locally. The importation of large numbers of migrants followed. The effect of migrants on the towns to which they were attracted is not entirely clear. A majority of the justices interviewed implied or stated that the effect was an increase in criminal offenses, particularly assaults.

As in Orleans County, mechanization and fluctuating prices have forced changes in farming and processing, causing corresponding changes in the employment of migrants. Beginning in 1967, the need for migratory labor began to decrease, but an unanticipated event has led to a more precipitous decline. In 1967, the Golden Nematode fungus was discovered in the roots of potatoes and in the potato fields of the Towns of Wheeler and Prattsburg. United States Department of Agriculture imposed a quarantine on all potatoes grown in these towns. Only potatoes that were washed could be sold, but washing broke down the fibers thereby making them unusable for potato chips. Other growers refused to take the time to wash the potatoes, so, in essence, extensive potato farming in these towns was effectively stopped. Inevitably, the need for migratory labor was eliminated in these towns and decreased in other towns, but many former migrants remain.

So, in 1970, the picture that can be drawn of the migrant in Orleans and Steuben Counties is vastly different from the one that could be drawn perhaps only three years ago. Farming is the major occupation in both counties because of the particular fertility and desirability of the land. In Orleans County, for example, the land is flat with fruit orchards systematically breaking the sameness of the rich, black soil. The most noticeable aspect of the farm land is the muckland region in the Southern part of the county which extends into Neighboring Genesee County. According to one report, the muckland region extends over seven thousand acres and yields approximately seven million dollars worth of crops each year.[1] These crops include lettuce, potatoes, onions, and a variety of fruits. Marring this otherwise idyllic picture is the fact that migrant workers have a state minimum of a dollar and forty cents an hour to maintain and harvest crops which provide substantial profits for others.

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[1] Rochester (New York) Democrat & Chronicle, June 28, 1970.

The Migrant Population

In 1968, New York State ranked seventh in migrant population in the United States. Orleans and Steuben Counties contributed to this rank. One report listed 29,280 migrant laborers in the state during the 1968 crop season,[1] 1716 of whom were in Orleans and 1750 in Steuben.[2] Unfortunately, these data are not entirely consistent with those of the Senate Subcommittee shown in Table II. The latter shows that during 1968, 16.5% of the New York State migrant population lived and worked in the two counties. (By extrapolation, the Butterer Census would suggest that the percentage was only 11.4). Whichever source is used, the percentage is fairly high.

However, this represents a decrease in the past ten years. The Byrdett report (*Rochester Times-Union*, September 11, 1970) indicates a decrease from 4,000 in 1960 to 750 in 1970 in Orleans County. Using another index we find that 5.0% of the county's population did migrant farm work in 1960, and preliminary Census reports for 1970, indicate 4.7%.[3] A similar decline was evident in Steuben County. (See Table II, Below)

TABLE II

THE MIGRANT POPULATION IN ORLEANS AND STEUBEN COUNTIES

	Total Migrant Population			% of N.Y.S. Migrant Population	% of Migrants to Total Population of County			
					Steuben Cty.		Orleans Cty.	
	N.Y.S.	Steuben	Orleans	Steuben -- Orleans	1960	1970	1960	1970
BUTTERER	X	1,750	1,716	11.83%	1.79%	1.77%	5.0%	4.65%
SEN. SUB.	29,280	2,180	2,666	16.55%	2.23%	2.21%	7.8%	7.2%

SOURCES: Butterer, *Census...*, pp. 11-14; Senate Subcommittee, *The Migratory Farm Labor Problem...*, 1969, p. 123.

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[1] Senate Subcommittee, *The Migratory Farm Labor Problem...*, 1969, p. 123.

[2] Clifford Butterer, *A Census of Migrants in Eight Western New York State Counties in 1968* (Geneseo, New York: New York State Center for Migrant Studies, June 1969), pp. 12, 14.

[3] Butterer Census for total number of migrants in each county and *County and City Data Book 1967* (Washington, 1967), p. 252, for total population of each county.

The Plight of the Migrant

Migration not only causes economic and physical hardships, but also contributes to psychological problems. One reason for the latter is that frequently the male migrant must leave his family behind. The migrant may then becaome anxious about the condition of his family left behind as well as the demand for his labor far from home. In most counties adult males constitute the bulk of the migrant population. In Orleans in 1968 there were 876 adult males, 261 women, and 579 children. Steuben was proportionately the same with 937 adult males, 384 women, and 429 children.[1]

Another factor that creates problems for migrants is their ethnic composition, which reveals they are exotic to the counties in which they find work. In Steuben County in 1968 all the migrants were black, while in Orleans there were 1342 blacks, 328 Puerto Ricans, and 48 white migrants.[2] Virtually all the residents of both counties are white, and not a few are of foreign stock. Prejudice, while not inevitable, is comprehensible.

Because of their migratory status, migrants live for only short periods of time in areas where they work. The average season in Orleans and Steuben Counties is three months, during which time the migrants must find housing, typically called "camps." In Orleans County in the years of the study and presently there are thirty-eight camps located in eight of the ten towns. Although Steuben is considerably larger, there was reported to be one less camp in the seven towns making up the northern part of the county.

The living conditions in the camps vary within each county and within each town.[3] For example, in Orleans County there are four camps just off a main east-west route, Route 31. The disparity between camps is vividly demonstrated even on an individual farm.

On one section five plain but relatively new trailers in fair condition serve as migrant housing. By contrast, on another section migrants live in an old farm house, which lacks doors, screens, and windows. It was unpainted and as depressing to the researchers as it must have been to the male migrants seen relaxing on what was once a porch. An even more stereotypical, run-down camp blemished the countryside only a stone's throw from there. Hidden behind a cinderblock house off the road were small buildings resembling large outhouses in an advanced state of decay. About a quarter mile south there was another farmhouse in worse shape, if possible. White children were seen peering out from an opening where a front door should have been. Absolutely nothing good can be said about this migrant "housing."

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[1] Butterer, Census..., pp. 12, 14.

[2] Ibid.

[3] The number of migrants housed in these camps also varies. Each of the two largest camps, near Lyndonville, has fifty residents. Another camp, in Carlton, has forty migrants there. Others vary from only a few to thirty. Byrdett report in Rochester (New York) Times-Union, September 11, 1970.

By contrast the housing in a nearby farm was palatial, though the researchers and probably few readers would volunteer to live there. It consisted of trailers only a few years old which appeared to be the best maintained in the area.

Camps in Steuben County were equally varied. One camp resembles a motel appearing to be only a few months old. Eschewing the battleship gray, musty appearing colors so common, they chose bright, attractive colors. Located behind it was an older building which was acceptable. Only a few miles away on Haskinville Road is a camp impressive because of its physical deterioration. Old trailers were decayed, and nearby shacks were characterized by lack of windows and rotted walls. These conditions seem to have been ignored for years.

As suggested earlier, the psychological aspects of migratory labor as well as the physical must be considered. A camp in Fremont consists of one long cinderblock building resembling a German concentration camp. It is about fifty feet long with dull gray wooden doors, badly weathered and worn. Not even the high weeds could obscure the effect. The door of each "apartment" was numbered from one through thirteen, and the painting suggested the work of a small child. Many camps were similarly unacceptable, even pitiful. A young woman barely 5 feet 3 inches tall visited white migrant housing in Albion, and she could not stand erect inside the building. Her description, "It was like a chicken coop. It was dark, dark...,".

Recent attention to the migrant condition through newspaper reports, magazine articles, and television programs indicates increasing concern and implies that some change may be forthcoming. Still there are many individuals who possess the authority to effect change, but who rationalize and fail to exercise that authority. The following example is illustrative. On the eastern edge of the Elba mucklands in Orleans County lies New Guinea Road. It is an isolated, narrow road with woodland along each side. Near a produce storage building and behind a slight rise are four shacks partially hidden behind a cinder-block house. The shacks were rotten and on the verge of collapse. More depressing was the fact that the camp, housing former migrants, is unlicensed, and, according to a justice in the area, the Board of Health cannot do anything about it. (The reason may be that the shacks are "owned" by the dwellers and are, therefore, private property, or they are not legally defined as "camps".) The justice, a county officer, expressed concern but no desire to act. He claimed there would be nowhere to house the migrants if the camp were closed. Because of his and similar indecisiveness and rationalization the problem remains; a blot on the town despite the attempt to hide it.

In Albion in Orleans County there is a new type of migrant "housing." It is unlike the camps described, but frequently is as bad or worse. One example is an old office over a pool hall, which a village policeman describes as having been made into "apartments" by means of six foot high partitions. Only black, males, many of whom are or were migrants, live in these "apartments." The interior of this "remodeled" office is alleged to be disgraceful, but unaffected by official action. Another example of the "new" housing is an unlicensed "camp" which was until recently run by Birds Eye Foods.

Former migrants, as well as those who perform farm work, continue to live there. Again authorities seem to ignore its existence. But, a factor which compounds the "crime" committed against migrants is the fact that commonly high rents are charged for this "new" housing.

Outside the Town of Gaines, Orleans County, along Route 104 there are two trouble spots located on the eastern edge of a moderate sized farm. The owner, a well known farmer, refers to them as "restaurants." Also on the farm are a produce market and three "tenant shacks." The shacks are cheaply constructed and look it. One contains 400 square feet, the second 384, and the third 300 square feet. They were built at a cost of $2.68 per square foot, making the cost of construction $1072.00, $1029.00, and $804.00 respectively, according to the last assessment which was in 1958. These shacks, the two "restaurants," and the produce market, despite their commercial nature, are listed on the tax rolls, as improvements on a "farm." The fact that migrants live in these shacks and in the backs of the "restaurants" renders them unlicensed "camps." To this can be added the fact that the two "restaurants" openly sell alcoholic beverages without license. In 1968, the "restaurants," called the Brick Wall and the Dragnet, were closed temporarily because of a homicide, but today they are open and again the site of a violent shooting. The reason given without any hint of embarrassment is that these "holes" serve to keep migrants out of the villages.

The double standard that exists is corroborated by a newspaper report of the arrest of a group of young people for camping on another farm owned by the same man.[1] Three youths were brought before a town justice charged with loitering, while the remaining thirteen were charged with trespass. For loitering, a violation, one defendant was fined $150, another was jailed in lieu of a $150 fine, and the third was jailed because he could not post a $250 bail. The rest, charged with trespass, were fined $10 each. The loitering fines seem extraordinarily high and the $250 bail excessive. It is impossible for the researchers to demonstrate objectivity in describing the apparent hypocrisy of the town justice, who upholds one standard for those youths and another for the unlicensed camp-tavern owner. Yet, such conduct seems to be accepted without question. (This same justice expressed his apprehension about the researchers who he felt were looking for prejudice. Until this incident, the researchers were not critical of him.)

This incredible result cannot be attributed to official inaction. It is a sanctioned exploitation of migrants and outsiders. (The youths were described in one account as "hippies.") This slanting of the law appears to be common to other towns, as well. For example, migrants present little problem to the Town of Wheeler in Steuben County, because there are no bars in the town. Migrants, then, are forced to stay in the camps. In the Towns of Avoca and Wayland unlicensed bars within the camps (and along the main street of Wayland) are condoned, because they serve to keep unwanted migrants out of the view of residents. As far as the residents are concerned, the location of bars outside the villages and communities tends to diminish crime. When a crime is committed in or near a camp, it is usually ignored by authorities, but occasionally State Police are called in. This exception, one justice explained, occurs when "some are knifed, but sometimes they are knifed too deep."

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[1] Rochester (New York) Democrat & Chronicle, August 11, 1970.

Route 15 in Steuben County is known as the "Darkie Trail." It is the road along which migrants travel north to live, to work, and sometimes to die. A few years ago, according to a district attorney, a crew leader was found dead along the "Darkie Trail" with $1200 missing from his person. It remains officially an unsolved homicide. Just off Route 15 is the Welcome Inn, an old, unattractive farm house, where migrants can bring alcoholic beverages and can dance. It is claimed that the migrants "know their place"-- the Welcome Inns, the Brick Walls, and the Dragnets. These "places" the residents ignore like the plague. The Steuben County District Attorney considers the Welcome Inn the "toughest place" in the area. Crimes committed by migrants do inevitably occur there. For example, before becoming district attorney, he defended a migrant who had stabbed another migrant at a dance. The victim had cut in on the defendant and was invited outside where he was stabbed in the stomach and cut in the ear. When the defendant was questioned about his background and possible witness, he said that his wife was living down south with another man, but he had not obtained a divorce. The migrant's reason, according to the district attorney, was "that's for white folks." Unfortunately, he, like many other migrants, knew his place in this society.

The migrant is constantly reminded of his position in society by the housing he is forced to accept, by the discrimination he encounters daily, and by the utter lack of hope for something better. More important, he must be regarded as a stereotype as much as the black in the ghetto. For example, one justice said: "They [migrants] come in and get their welfare checks and buy cheap wine and get stoned. Then they are found lying in the streets and the alleyways." This attitude, whatever the specific words, was often encountered during the research. [Suggesting the generality of this attitude is the Florida grower's statement that the "American people (read "migrant") has become so used to easy livin' they don't want to work anymore...They will not work." (sic.)[1]] It seems to be born out of ignorance of the notion of cultural relativity, out of lack of empathy, and out of unhappy experiences with migrants. Seldom is the migrant subculture considered as offering another identity and other values. Seldom is the lack of education of migrants recognized, or else it is dismissed with the statement like one justice posed as a rhetorical question: "How can you educate when there is nothing to start with in the first place?"

Some justices appeared to feel that education might be the key to helping the migrant. Unfortunately, "80% of migrant children never enter a high school classroom [and] more than half don't even get to seventh grade."[2] Even when they attend school it is usually for a short period of time (a maximum of seven months) and they may miss instruction in a subject one year never to pick it up again later. This tragedy is compounded by the fact that the inferior status assigned to migrants is reinforced constantly, so that their expectations do not go beyond what their parents have. The sociological notion of the self-fulfilling prophecy seems operative: if a person or group is constantly told that he or it is inadequate or inferior, eventually this estimate is accepted as reality and is demonstrated. Persons who are regarded as a "bunch of animals," as one State Policeman candidly remarked, cannot have much respect for themselves. Steuben County migrants, allegedly enlisted from the "skid rows" in Syracuse, Rochester, and Baltimore, were considered by this same trooper to be worse than those in Orleans, whatever that might be.

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[1] NBC White Paper, July 16, 1970.

[2] Ibid.

Migrants are continually reminded of their place in society by those who, because of ignorance or blindspots, think like the trooper. Blatant prejudice was demonstrated by a justice's wife. A migrant was brought into justice court after arrest and was promptly bitten on the pantleg by the justice's dog. The wife's reaction, according to her testimony, was "even our dog doesn't like colored."

Discrimination, lack of education, uprootedness, and a continuing cycle of desperation create a sense of despair and hostility which seldom surfaces publicly. Only a few instances of this hostility were encountered in our research. Most of the time migrants are extremely suspicious of and guarded among non-migrants. They appear to contain their hostility, but occasionally it will erupt in fights or destruction of the camp facilities and their own possessions. More often the hostility is illustrated by drinking and withdrawal. An example of despair is the fifty year old ex-migrant who has been a problem drinker in Medina for many years. (His age alone is worthy of note, since the "life expectancy for the migrant worker in America is forty-nine years.")[1] The village policemen consider him a hopeless man. His mention is accompanied by an occasional laugh tinged with pity. From January 1968, to December 1969, he was arrested twelve times for public intoxication. His sentences varied from fifteen days in jail to twenty dollar fines and conditional discharges. However, not once in the two years studied was he committed to a hospital for treatment nor did the thought seem to occur to the police or the justice. He is the "town bum," helpless and unhelped; a migrant whose whole life seems pointless.

Indians from the Six Nations reservation in Canada will sometimes wander into Orleans County to work. Two worked for a time before getting into trouble, but because of the problems they caused, they were told to leave town. Trouble seemed to follow them forcing them to move again and again. The road is now their home and they too are uprooted. As one migrant told Dr. Robert Coles: "Life on the road is no life."[2] These two Indians, then, have no life.

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[1] Ibid.

[2] Senate Subcommittee, The Migratory Farm Labor Problem..., 1969, p. 18.

No one seemed to like one Puerto Rican migrant. Poorly dressed and hostile, "he looked like a colored." He apparently needed and strove for acceptance any way he could find it. He is claimed to have placed lighted cigarettes and matches on his arm, leaving horrible scars to impress others with how long he could endure pain. After one arrest he was committed to Rochester State Hospital for examination where he was found not to be mentally ill. One woman who knows him perhaps as well as anyone, feels that he could be a good person if given a chance and if trusted. But at twenty-one he has learned his place in society and has given up on life.

CHAPTER III

THE COURTS IN ORLEANS AND STEUBEN COUNTIES

Types of Courts and Jurisdiction

On January 1, 1962, the first major reorganization of the New York State courts since 1846 was accomplished and became part of the constitution.[1] By the new Article VI, operative September 1, 1962, a unified court system was established. The state was divided into four Judicial Departments for appellate purposes with supervisory authority over the eleven Supreme Court Judicial Districts. The Court of Appeals remains the highest court, hearing appeals from the Appellate Divisions of the Supreme Courts, which, in turn, hear appeals from the Supreme Courts. The Supreme Courts continue to enjoy unlimited original jurisdiction over civil and criminal cases.

The County Courts

In addition, and limiting this only to criminal jurisdiction, in Orleans and Steuben Counties, the County, District, Town, Village, and City Courts are continued and their jurisdiction clarified. The County Court's jurisdiction extends to:[2] 1. Minor crimes removed to it from inferior courts or upon presentment of indictment. (*Code of Crim. Proc.* §39 (1).) 2. Trial and determination of all indictments for felonies and misdemeanors. (*Code of Crim. Proc.* §39 (2).) 3. Setting bail for persons arrested for indictable crimes, or already indicted, and discharging such persons from prison if they are not lawfully indicted or tried. (*Code of Crim. Proc.* §39 (10).) 4. Reviewing actions of inferior courts with respect to "disorderly persons actually imprisoned" and with respect to undertakings to keep the peace. (*Code of Crim. Proc.* §39 (6), (7).) 5. Determining the admissibility of confessions; whether confession was uncoerced and a defendant apprised of his right to counsel. 6. Making decisions with regard to the retroactive effect of a denial of the right to counsel.

County judges, in comparison with town and village justices, are required to be lawyers. They are nominated at primary elections and voted upon at the general elections to serve for ten years. Their election is based on a number of factors, two of which are their political affiliations and their legal experience.

Inferior Courts

The criminal jurisdiction of the District, Town, Village, and City Courts, the "inferior courts" is also specified:[3]

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[1] *The Judiciary*, pp. 9-13.

[2] *Ibid.*, pp. 179, 181.

[3] Adapted somewhat from *The Judiciary*, p. 269. The commission indicates

As courts of special sessions, these inferior courts have the power to arraign, bail, try and sentence persons for:
-----Violations of local laws and ordinances.
-----Traffic violations (except misdemeanors prosecuted by indictment).
-----Misdemeanors not prosecuted by indictment.

As magistrates, to issue warrants, to arraign defendants, to determine whether probable cause exists to hold defendants for grand jury action and to set bail with respect to:
-----Felonies.
-----Misdemeanors, whether or not prosecuted by indictment.

The criminal jurisdiction of these inferior courts depends not only upon the nature of the crime, but also upon the location of its alleged commission. The territorial limits of the criminal jurisdiction of the inferior courts are:

City Courts. Misdemeanors and offenses committed in the city. (U.D.C.A. §2001)

Town Justice Courts (oldest of inferior courts). As a court of special sessions: misdemeanors, offenses, and violations, including traffic infractions, committed within the town (except that as to misdemeanors committed in a village in a town having a police justice, the town justice can act only in the absence or disability of the police justice and acting police justice). As a magistrate he may examine persons charged with committing a felony in the county. (U.J.C.A. §2004, effective September 1, 1967.)

Village Justice Courts. As a court of special sessions: misdemeanors offenses, and violations committed in the village. As a magistrate, he may examine persons charged with committing a felony in the county. (U.J.C.A. §§2001, 2004, effective September 1, 1967.)

Under Town Law, §82, all towns of the first class (over 300 inhabitants) may elect two justices, and towns with less than 300 inhabitants are entitled to elect one justice to serve for a term of four years. (Town Law §24.) The terms are staggered to allow for continuity and experience. Every justice at the time of his election must be the owner of record of real property in the town. (Public Officers Law, §3.) Effective with the court reorganization before taking office town and village justices must either be licensed to practice law in New York State or must have taken a "course of training and education approved by the" administrative board of the State of New York Judicial Conference. (Code of Crim. Proc. §62-a.) Justices in Orleans and Steuben Counties may elect to take the prescribed training either at the State University of Buffalo Law School, Cornell, or the St. Lawrence University Police Academy. The specific number of hours of instruction is set by the school. For example, some justices took

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"The basic jurisdiction section sections are §§2001-2005 of the Uniform District, City and Justice Court Acts, read in conjunction with the Code of Crim. Proc. §§56-62, 145-166 and 188-221-b."

instruction over a week end, beginning on a Friday night and extending through Sunday afternoon. Other justices received a total of forty-eight hours of instruction extending over six days.

Justices hold office by election and until December 31 of the year in which they reach seventy years of age. How strictly this is adhered to cannot be determined unequivocally, but it is known that two justices in Orleans County and at least one in Steuben County are over seventy. This can be disadvantageous to offenders and to arresting officers, as was the case where one over-age justice did not want to be bothered at an inconvenient hour. On the other hand, retired persons who serve as justices seem to prefer to spend their time as justices and are often available at different times of day.

Salaries of justices are determined by the towns and villages they serve and vary considerably. One town justice receives $1100 per year, while another receives $4000. It has been suggested by one justice that the salary may be based upon the amount of business conducted by the justices and it may or may not be compensatory depending upon the "paper work" required. Typically, the clerical work is extensive. The salary is paid in part and may be determined in part by the fees received by the justices and returned to the town and village clerks by the counties. A five dollar fee is paid to the town or village every time a justice conducts a criminal trial, including misdemeanors and other offenses, acts as committing judge, receives the return of a case on appeal, examines informations, takes depositions, or issues warrants. (Code of Criminal Proc. §740-a.)

It is tempting to suggest that justices will strive to enhance their salaries by handling more cases, but there is nothing to support such an interpretation. More likely the number of cases handled by a particular justice is determined by the wishes of the law enforcement officials, by the proximity of the justice to the place of arrest, by the demonstrated preferences of some justices for handling traffic, civil, or criminal cases, and, of course, by the number of arrests made in his jurisdiction. For example, one justice was inundated by traffic cases brought to him by troopers personally or mailed (common when radar is used) in part because of the location of the town on a main highway between Rochester and Buffalo. A similar situation was found in Steuben County in the town of Avoca located on busy Route 15. By comparison, justices in rather isolated areas had considerably fewer traffic and criminal cases and lower salaries. Another justice, because of his accessibility--he owned a combination gas station-grocery store by his home requiring his continued presence--handled the largest number of cases of any town justice. His salary was less than $4000 however.

Each justice is required to maintain three dockets: a vehicle and traffic docket ("V & T"), a criminal docket (including indictable cases), and a civil docket. The dockets are quite complete in terms of the required information and are easy to read by the unitiated. The dockets are submitted to the town or village board for examination and audit as required by the village or town, which is generally annually. (Public Officers Law, §§15, 31.) This does not guarantee complete accuracy, nevertheless. For example, more than one justice's dockets showed cases without disposition, without signatures, without dates, and without ages or addresses of defendants. When the dockets were examined by the researchers, the justices appeared somewhat flustered and tried to explain the omissions. It did not appear that there was any attempt to conceal or manipulate cases. In fact, one justice, when asked about the age of a defendant whose case was used in the sample, readily supplied the information though embarrassed to have to admit the defendant was his brother-in-law. (An interesting but somewhat irrelevant question is the treatment of relatives by justices. One justice who faced a similar situation noted that justices may refer the arresting officer to another court, but a trooper states that this practice is not universal in justice courts. He claims that many justices will handle such cases appearing to "remain very objective [and] would convict their own mothers.")

Court sessions are held more or less regularly, depending upon the justices' predilections.[1] Commonly one evening a week is designated, though some justices hold court on Saturday afternoons. Other justices do not set a night, but come irregularly on the nights the other justice holds court. One justice, for example, came in so irregularly that he did not even have a key to open the door to the court room one evening. Worse, he was not even rewarded by having any cases brought before him, which made the effort seem all the more futile.

In the counties studied, the sessions are generally held in rooms set aside in the town garages--"town barns" is the more common and accurate description. The rooms seem to reflect the concern of the town, and the fact that many are in the town barns suggests little desire to formality. One court room was located in an old town highway barn recently (and poorly) painted battleship gray. There was a musty, oily smell pervading and the simple black lettering on the yellow-painted plywood sign indicating the court room did not enhance it. Another justice room unmarked in any way, was a ten feet square cubicle off to one side of the highway garage with a road grader only a few feet away. Inside, the room was stifling, dusty, and fly-infested. (Another court was almost its duplicate, though smaller and dirtier.) The justices, both of whom attempted to carry on their proceedings at the same small desk, indicated that the general appearance suggested the attitude and finances of the town's residents. A justice in another town attempted to bring some dignity and decorum to his court, another small, dirty room, by donning a black robe for the regular sessions. The effect was something less than sought because of the general untidiness and proximity to the rear of his gas station.[2]

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[1] While this refers to announced court sessions, the peculiar advantage of the justice system is the availability of justices at all hours. Court may be held whenever circumstances require, and typically justices are more often than they like, "roused" from bed to set bail or try a case.

[2] It should be noted that this discussion refers to the "typical" court room encountered. Village courts (Albion, Medina, and Wayland) were rather attractive and formal. Town courts in more affluent metropolitan areas may be significantly more formal and dignified. However, the courts most migrants see are the ones described.

As noted before, the criminal jurisdiction of the justice courts extends to all violations of local laws, traffic violations, nonindictable misdemeanors, and to the initiation of indictable cases arising in the towns and villages wherein the cases originated. Town justices can also hear, try, and determine cases arising within villages during the absence or inability of the village justices to perform these services. (Code of Criminal Procedures, §60.) They can grant bail to defendants charged with criminal offenses out of their jurisdiction to accommodate a defendant or arresting officer. An example was the case in which a woman defendant living some distance from a city was arrested at night for issuing a bad check in that city. The arresting officer allowed the defendant to appear before the town justice for posting of bail and setting the date for appearance. The bail check and the information were then mailed to the city court for disposition.

Other Judicial Personnel

Before examining the criminal procedure in the justice courts, reference should be made to other personnel who are a part of the proceedings in the justice courts. In order of appearance, there are the arresting officer, the defendant's counsel (if any), and the district attorney or assistant.

The arresting officers in the towns are constables, county sheriffs and deputies, and State Police. In villages the officers are village police, sheriffs or deputies, and again, State Police. Generally the arresting officer, or designate, does not appear in traffic violations, which are initiated by informations ("traffic tickets"). The officer may bring in copies of the information personally or may mail them in. In other cases the arresting officer appears at the defendant's arraignment. The arresting officer's appearance is particularly important, because the officer can strongly influence the result of the case. His testimony and willingness or unwillingness to have a charge reduced can bear heavily upon a generally untrained justice, who will often accept the arresting officer's word. There is even a hierarchy of arresting officers. State Police rank at the top and in descending order are village police, sheriffs and deputies, and constables. A trooper's testimony can often determine a case disposition, while a constable's statement may be disregarded by a justice. For example, one constable without solicitation proferred his estimate of a justice, claiming excessive leniency in sentencing--meaning the justice ignored the contable's testimony.[1]

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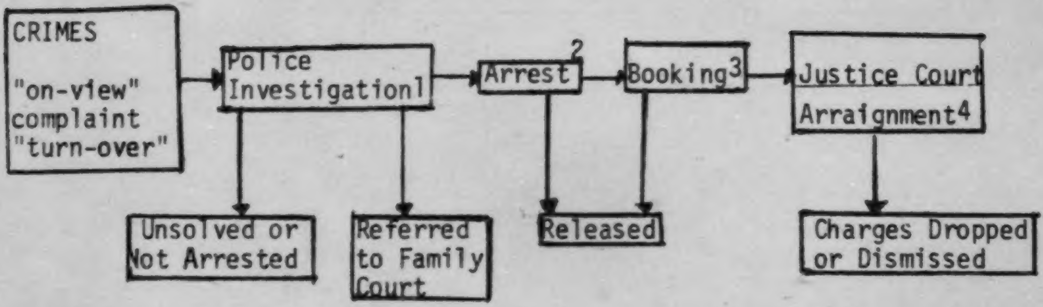
[1] One experienced State Policeman on reading this, suggests our interpretation of the constable's statement may be inaccurate, and claims that "many justices are influenced by whether or not a defendant is a local, or out-of-town, or out-of-state resident, and will set bail or fines accordingly, being more lenient with local residents (who may vote him out in the next election). However, some magistrates don't even levy the mandatory fines, feeling that a fine, although mandated, is too steep, and that the accompanying violation isn't that serious. In some cases I've seen a court room resemble a market place, where the judge levies a fine, the defendant hasn't got enough money, so the judge lowers the fine to a point where the defendant is able to pay, and so avoid sending the defendant to jail in lieu of the fine."

FIGURE 4

AN OVERVIEW OF JUSTICE COURT PROCEDURES


CRIMES
"on-view"
complaint
"turn-over"
Police Investigation1
Arrest
2
Booking3
Justice Court
Arraignment4
Unsolved or Not Arrested
Referred to Family Court
Released
Charges Dropped or Dismissed

SOURCE: Elizabeth Benz Croft, A Plan For Court And Probation Services (Rochester, New York: The Rochester Bureau of Municipal Research, Inc., 1968), pp. 68, 69. Reprinted by permission of the author, and adapted.

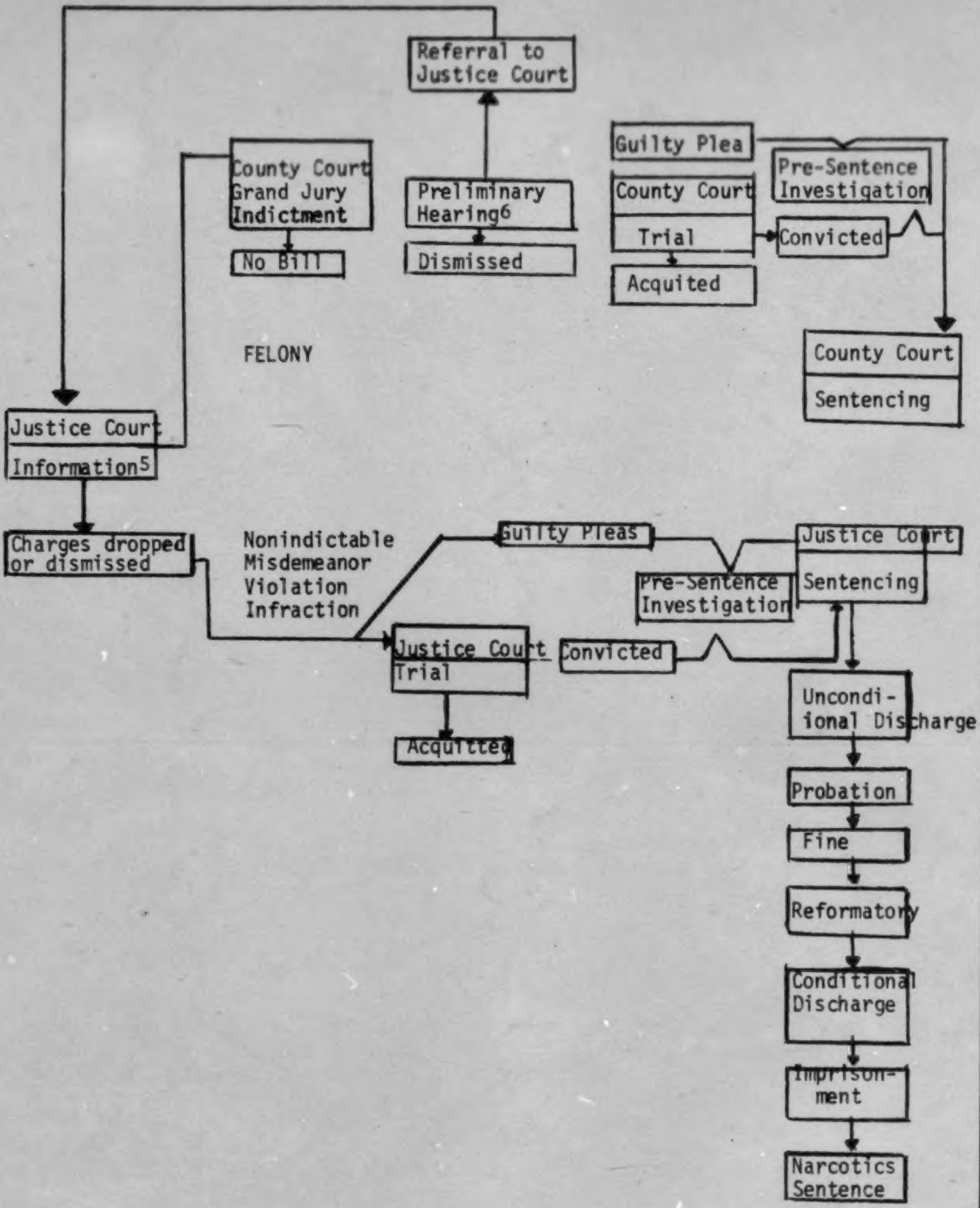
[1] May continue until trial

[2] On basis of deposition signed by justice

[3] Administrative record of arrest. Defendant may be held overnight in lockup.

[4] Formal notice of charges, advice of rights. If defendant financially unable to employ attorney, court assigns indigent defense counsel. Bail, bond or release on recognizance established. If defendant does not meet conditions is detained in County Jail. Trials for minor offenses usually conducted here without further processing.

FIGURE 4 - CONTINUED


Referral to Justice Court
County Court Grand Jury Indictment
No Bill
Preliminary Hearing6
Dismissed
Guilty Plea
County Court Trial
Pre-Sentence Investigation
Convicted
Acquited
County Court Sentencing
FELONY
Justice Court Information5
Charges dropped or dismissed
Nonindictable Misdemeanor Violation Infraction
Guilty Pleas
Justice Court Sentencing
Pre-Sentence Investigation
Justice Court Trial
Convicted
Acquitted
Unconditional Discharge
Probation
Fine
Reformatory
Conditional Discharge
Imprisonment
Narcotics Sentence

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[5] Charge filed by prosecution on basis of information submitted by police or citizens.

[6] Preliminary testing of evidence against defendant.

The reason for emphasizing the appearance of the arresting officer is that commonly the defendant's arraignment and trial in the town justice courts occur the same night as the arrest. That is, the defendant may be arrested, informed of the charge, asked whether he requests counsel, and may plead or be tried in a matter of minutes after arrest. A similar situation may exist in village courts, though more often the defendant is released to appear the next morning. If there is reason to believe the defendant will not appear for his arraignment, he may be held overnight in the county jail (towns have no facilities for holding offenders) and brought into court the next morning at a special session for granting bail or trying the case. In either court it is quite different in the event the defendant requests counsel and the request is granted. (Despite the statutory requirement for counsel, this request may be meaningless, because the defender is unavailable or the defendant is persuaded not to request counsel.)

If counsel appears for the defendant, another process is set in motion. Counsel may argue for dismissal of the charge, or failing that, may ask for a trial and a not guilty finding. More often counsel, retained or appointed, seek a reduction of the charge, to which they allow or suggest their clients plead guilty. In a sense then, the trial or negotiation takes place between counsel and the arresting officer, though some arresting officers believe they are not consulted often enough. The justice is placed in a position whereby he hears disputed testimony and law, and he may often grant the counsel's motions because of the differential legal training. The leverage tends to be weighted on the side of the counsel, unless he appears before a lawyer-justice. On the other hand, a justice may resent the superior attitude counsel may convey and will deny a counsel's motions or in some other way demonstrate his dislike for counsel. While counsel generally does not represent migrants, when counsel does appear, the process described may influence the disposition of his case. More often than not, the migrant is persuaded to plead guilty or does not even request counsel.

In considerably fewer cases, the district attorney or his assistant will appear in the justice court. This will occur in more serious misdemeanor cases, in cases returned from the county court, or where a jury trial is sought. This may result in one of the few full-scale trials that will take place.

The Flow of Cases

Figure 4 supra pages 40, 41, outlines the general justice court procedures from the commission of an offense to the final disposition in the justice and county courts. All but a few cases examined in this study originated in the justice courts and subsequently were disposed of there. Some of the cases handled by justice courts are referrals from the county courts because a no bill (no indictment) was voted by the grand jury but grounds appear sufficient to sustain a criminal charge.

The Origin of Justice Court Cases

Cases handled by justices originate upon arrests based on direct observation ("on-view arrest"), complaints made to village, town, county, or state police officers, or depositions by complainants filed with justices. (Traffic violations, which were not examined in this study, are initiated by a citation left on the offender's car or by a summons issued to an offender directly.) Arrest warrants are issued by justices to police only when an offender fails to respond to a summons. In comparison with city and village courts, most defendants arrested for committing misdemeanors and indictable offenses are brought directly to town justice courts, because justices can usually be reached and it avoids unnecessary delay, which is disallowed and can be grounds for appeal. (Code of Crim. Proc. §§170, 165.) That delays do occur, however, was dramatically demonstrated by the notorious case of the resident migrant whose fingers and toes were frostbitten and amputated.

Justice Court Prodedures

After arrest, the accused either may be released without prosecution or taken before a justice for arraignment (informed of the charge). Generally, in justice courts, the information (stating the charge) is filed prior to the actual arrest or appearance of the accused, and arraignment occurs at his first appearance. The trial may be held immediately, and typically a guilty plea is made, or the case can be continued at a later time and the defendant released on bail or recognizance.

Bail

Because of the informality of the justice courts and the familiarity of the justices with many of the defendants, bail is often small and granted by the justices. In some indictable cases or felonies, bail is either high or disallowed, and the defendant is jailed. It is not unusual for a drunk defendant to be committed to the county jail overnight to "cool him off" or to assure that the charges laid against him are clearly understood. (An intoxicated defendant is generally considered incapable of understanding the charges and consequently must be jailed or bailed for later appearance to be advised of the charge and his rights.) The commitment commonly becomes the sentence, if convicted. One migrant defendant who was brought into court on a variety of traffic violations was drunk and considered so obstreperous that he was held in the county jail for forty-eight days. It cannot be determined whether he was jailed upon conviction for the traffic charges (there is no record), or for his conduct. It appears to be the former. He was subsequently brought back to the court on the charge of obstructing governmental administration (fighting with the police officer and the justice) and sentenced to time served in the hope that he would leave the area ("go south") because the harvest season was over.

An alternative to bail or commitment is release on recognizance ("ROR"), which, as implied, means that a justice confident of the return of the defendant will release the defendant on his promise of return to the court at the appointed time. This is a particularly desirable arrangement for the poor defendant, the migrant especially, and seems to be fairly satisfactory to many village and some town justices. One justice estimates that at most, only four or five defendants have not returned to court in the four years he has served.

Trials

After arraignment and advisement of rights, the trial of a non-indictable misdemeanor or traffic violation case may be conducted. Indictable misdemeanors and felonies are transferred to the county court after the justice conducts a preliminary hearing (a "baby trial," as one justice suggested, to determine whether sufficient evidence exists to warrant trial). In all other cases there is a preliminary hearing if the defendant or his counsel requests it, and the case is continued for trial.

The conduct of a trial in the justice court may consist of nothing more than the justice asking the defendant how he wants to plead and whether he wants a jury trial. The vast majority of cases result in guilty pleas, the only standard for which is that the plea "must be oral and entered upon the minutes of the court." (Code of Crim. Proc. §700.)

If a defendant does not enter a plea and does not demand a jury trial, the case is tried directly. However, if the defendant demands a jury trial, the justice must grant one.[1] The Code of Criminal Procedure, Sections 703-713, clearly outlines the summoning, drawing, constitution, oath, and conduct of the jury. Suffice it to say that every town and village develops its own system for jury selection. The jury of six is generally selected from property owners whose names are put in a box and drawn by lot. As in any jury trial, challenges are allowed. Three peremptory challenges (challenges without stating a reason) are granted the defendant or his counsel. Even "bystanders," uncommon to justice courts, are permitted to be jurors, unless proven to be hostile to the defendant.

Dispositions

Whether the trial is held by plea, by the bench, or by the jury, typically dispositions fall into one of three categories: 1) not guilty finding by a jury or dismissal by the court; 2) withdrawal of the charge by the police, the prosecutor or the complainant; or 3) conviction. Acquittal reflects a jury trial and not guilty finding. Dismissal by the court is similar or an information is found to be faulty. Withdrawal of the charge by the police or prosecutor may reflect unwillingness to prosecute because of insufficient evidence, a faulty information, or because it is the defendant's first offense.

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[1] §§701, 702 Code of Crim. Proc. Case law supports the fact that despite the generally accepted practice of allowing jury trials only in felonies or misdemeanors, defendants have the right to demand a jury trial in courts of special sessions outside New York City, which includes town and village courts. People v. DeCinto, 24 Msd 21, 207 S2d 646 (1960).

Withdrawal by the complainant will occur often in assault or harassment cases, when the complainant (wife, former friend, parent, or neighbor) reconsiders.

Convictions may result in: 1) commitment to an institution (penal or welfare), 2) probation, 3) fine (applicable to all misdemeanors and offenses), 4) bail forfeiture, 5) conditional discharge, or 6) unconditional discharge. *Probation* generally means what it says though occasionally it will serve another purpose, as in the case of a defendant who was sentenced to probation of sixty days, during which he was to appear at the justice court each week. The anticipated result, with the defendant moving to another town, was considered a relief to the justice and the constable. *Bail forfeiture* means that a defendant has posted bail, has failed to appear and is, in effect, fined the amount of the bail. A *fine*, like probation, may serve another purpose. A stiff fine ($300 to $500, for example) may prove too much for the defendant to pay, and a jail sentence is then imposed in lieu of payment of the fine. The usual rule is a dollar a day up to 180 days. *Conditional discharge* means that conditions other than a fine, imprisonment, or probation, have been imposed by the court to last up to three years depending upon whether it is a misdemeanor or a violation. For example, one defendant had to promise to stay out of the complainant's apartment, another promised to get out of the village and state within twenty-four hours, and still another defendant promised "no excessive drinking." *Unconditional discharge* is a suspended sentence.

Another disposition that does not fit into any of these categories is Youthful Offender (*Code of Crim. Proc.* §913-n.). It is granted to a youth from sixteen up to nineteen years of age who has pleaded guilty and has asked for Youthful Offender treatment. The youth may serve a sentence but no criminal record is maintained and no one is allowed to examine the sealed envelope containing the disposition.[1]

Appeals

In New York State "appeal is not a matter of inherent right but exists only by authorization of statute."[2] The only exception is the case in which a defendant is given the death sentence, and appeal lies directly to the State's highest court, the Court of Appeals. (*Code of Crim. Proc.* §517.) Where a judgment other than death is rendered by a county or supreme court, the appeal lies to the appellate division of the supreme court of the judicial department in which the conviction was had. (*Code of Crim. Proc.* §517 [3].) Judgments in criminal actions in inferior courts "may be reviewed by the county court of the county, upon an appeal as prescribed by this title and by title eleven of part four, and not otherwise." (Code of Crim. Proc. §749.) The latter is particularly important to the present study, because a preponderance of the cases here examined occurred in these inferior courts. The courts early recognized the need for appeals in so-called minor cases. The appellate division of the supreme court near the turn of the century held that "it was the intention of the legislature to give the same right of appeal from Special Sessions that is provided in actions at General Sessions."[1] It might be noted, however, that one justice misreads the law and flatly states that no appeals lie in offenses and violations.

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[1] A more earthy description of this sentence comes from an attorney in private practice: "the Youthful Offender game is one of the odd features of law in that BOTH sides claim a win. The only real way to tell if the defense *did* win is to wait a number of years and see if the Y.O.'d defendant gets picked up again. If he does-it wasn't a win, and he is now a second offender. All Y.O. is--is a 'cop out' that is swept under the rug in hopes that it will stay there. Private defenders will only grab a Y.O. as a *last* resort if they have the kid cold. The Public Defenders immediately go to Y.O. as a first resort. Again, you gets what you pays for...!"

[2] *People* v. *Mellon*, 261 AD 400, 25 S2d 650 (1941).

All appeals must be taken within thirty days after the judgment or the commitment by filing an affidavit with a magistrate or clerk setting forth alleged errors. The affidavit must be delivered to the district attorney within three days. Justices are, therefore, required to retain their trial records for thirty days before disposal. At best, these handwritten records generally are not as satisfactory as might be desired. Town and village justices do not have clerks to transcribe their records, so a clerk must be hired at $12 to $15 a day to prepare the trial records for appeal. This circumstance not only can cause considerable confusion and irritation on the part of the justices, but also can require an expense that must be borne by the defendant unless he can prove indigency. This is significant in the case of the migrant defendant.

Indigency Determination and Assignment of Counsel

As suggested, the indigent defendant, commonly the case where a migrant defendant is charged with committing a criminal offense, labors under severe handicaps. The need for a trial record in the event of an appeal has just been noted, but even more important may be the need for assistance of counsel originally. This need has not gone unnoticed by the New York State legislature which has established clear statutory requirements:

> The board of supervisors of each county and the governing body of the city in which a county is wholly contained shall place in operation throughout the county by December first, 1965, a plan for providing counsel to persons charged with a crime, who are financially unable to obtain counsel...
>
> For the purposes of this article, the term "crime shall mean a felony, misdemeanor, or the breaking of any law of this state or any law, local law, or ordinance of a political subdivision of this state, other than one that defines a 'traffic infraction,' for which a sentence to a term of imprisonment is authorized upon conviction thereof."[2]

Every city, village, and town, then, is required to provide counsel to defendants charged with committing criminal offenses and unable to retain their own counsel. The particular form of counsel--public defender, private legal aid voluntary defender, rotating assigned counsel, or a combination of these three--is determined by the city or county. The exception may be that upstate counties must choose between the public defender or the assigned counsel plans.[1] Counsel, once determined, represents without charge any defendants determined by a magistrate to be indigent and who have requested and consented to an assignment by a magistrate.[2] Perhaps bowing to necessity, the duty of determining indigency is given to a magistrate but no standards are established by the statute, which reads:

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[1] People v. Markham, 114 AD 387, 99 S. 1092 (1906).

[2] §§722, 722a New York County Laws, Chapter 878 of the Laws of 1965.

> An indigent defendant is one who is not himself financially able to retain counsel, or in the case of a minor without resources of his own, one whose parent or guardian is not financially able to retain counsel for him. Before arraignment, a determination of indigency shall be made by the public defender. At or after the arraignment the determination shall be made by the court. In the event that the court assigns the public defender to represent a defendant believed to be indigent and it later appears that such defendant or his family is able to afford counsel, the public defender shall report this fact to the court and shall not be required thereafter to represent such defendant.[3]

Clear as this may seem, in practice the actual determination of indigency varies considerably. This variance is a reflection of two factors: 1) a justice risks appeal on the issue of self-incrimination if he asks a defendant about his financial resources (e.g., a charge of larceny) and 2) different standards applied by the defenders, according to their conceptions of justice. Generally it would appear that "as a matter of practice...assignment of counsel is approached with extreme sensitivity to the needs of the defendant and the slightest indication by the accused of his inability to retain counsel will usually be held to justify an appointment.[4] Though based on a study of felonies, this conclusion seems to be applicable to appointment in other cases. One defender claims that his standard is "does the defendant have money on hand to retain competent counsel to represent him," which means that it is possible for the defendant to have a house and a new car but no liquid assets. He noted also that a redetermination is sometimes made when he or assigned counsel subsequently finds a defendant has sufficient funds to retain counsel. Unfortunately, it is not known whether, in fact, counsel assigned by him do apply the same standards, and if migrants are similarly treated. The defender did state that if a migrant appears and has no money, "he (the migrant) is going to have an attorney."

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[1] According to an administrator of an assigned counsel plan who served as chairman of the county bar association committee to select a defender system pursuant to county law, the options of upstate counties were limited to either the assigned counsel or public defender plans. Interview with William J. Holbrook, June 30, 1970.

[2] §717 New York County Laws, Chapter 878 of the Laws of 1965.

[3] Ibid.

[4] Paul Ivan Birzof, Robert Kazanoff, and Joseph Forma. "The Right to Counsel and the Indigent Accused in Courts of Criminal Jurisdiction in New York State," 14 Buffalo L. Rev. 436 (1965).

Actual assignment of counsel also varies. In county court, judges appear to be quite careful to assure that counsel is appointed at or before the preliminary hearing in felony and indictable misdemeanor cases. City and village court judges also seem to be more sensitive to the need for appointment. An example is the insistence of the Hornell (Orleans County) judge that the administrator of the assigned counsel plan be present in court to receive assignments. In justice courts, however, assignment of counsel is practically non-existent in all but indictable cases which have been transferred to the county courts for possible indictment then returned to the justice courts.

Assignment in appeals appears common because of the rule made by the Appellate Division of the Supreme Court, Fourth Department, which included Orleans and Steuben Counties, effective April 2, 1964. (See Figure 5, next page.) Assigned counsel after sentence are required to determine in writing whether the defendant desires counsel and assume the case on appeal if the defendant so elects. William J. Holbrook, Administrator of the Steuben County Assigned Counsel Plan, has gone one step further in designing a form to be distributed to counsel who have already been assigned a case in the county. (See Figure 5, next page.) Counsel must instruct the defendant of his right to counsel on appeal and must have the defendant complete the form specifying his decision about whether to appeal. Whether such precautions are taken in Orleans County cannot be determined presently. The researchers suspect that the answer is in the negative.

The Need, Extent, and Types of Counsel

Few persons today would disagree with the notion that the assistance of the counsel in criminal cases is vital. Yet, the appearance of counsel to represent persons charged with committing criminal offenses is the exception rather than the rule. For example, in Los Angeles County, California, which was the first county in the nation to establish a defender office, "court attaches estimate that less than ten per cent of all defendants are represented by counsel."[1] A study performed in the Albuquerque municipal court corroborated this estimate.[2] In the Rochester (New York) City Court the percentage of all defendants (only misdemeanors and violations) represented by counsel was only four per cent higher.[3] Thus, in these jurisdictions which have some statutory requirement for counsel, approximately 90% of all misdemeanor defendants are unrepresented. In states without statutory requirements, one can only speculate about how much less opportunity for counsel exists in so-called minor cases.

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[1] Ralph H. Nutter. "The Quality of Justice in Misdemeanor Arraignments Courts," 53 Jour. Crim. Law, Crim., and Pol. Sci. 218 (1962).

[2] Commission on Civil Rights, Mexican-Americans and the Administration of Justice in the Southwest (Washington: U.S. Government Printing Office, March 1970), p. 54.

[3] Mahood, "Defending the Poor...". (unpublished Ph.D. dissertation, Department of Social Science, Syracuse University, 1969), p. 69.

Figure 5

APPELLATE RIGHTS OF DEFENDANTS

The Justices of the Appellate Division, Fourth Judicial Department, have adopted the following rule effective April 2, relating to the duties of assigned counsel.

"It shall be the duty of counsel assigned to the defense of an indigent defendant upon the trial of a criminal action or proceeding, to accept the said assignment and to represent the defendant to the best of his ability until the matter has been terminated either by acquittal and dismissal of the indictment or by sentence if the defendant is found guilty.

After sentence has been pronounced, it shall also be assigned counsel's duty, promptly and in writing, to advise the defendant fully as to his right of appeal, the time limitations involved and the manner of instituting an appeal and of obtaining a transcript of the testimony. He shall ascertain whether his client desires to appeal, and if he so desires, counsel shall serve and file the necessary notices of appeal, after which his duties as assigned trial counsel shall have been completed."

IN WITNESS WHEREOF, We have hereunto set our hands and caused the official seal of said Court to be affixed this second day of April, 1964.

Signed, Alger A. Williams, Presiding Justice; Earle C. Bastow, Harry D. Goldman, Frederic T. Henry, Robert E. Noonan and Frank Del Vecchio, Associate Justices.

* * * * *

TO DEFENDANT - AFTER SENTENCE

From his Assigned Counsel, pursuant to a rule of the Appellate Division of the Supreme Court, Fourth Department, effective April 2, 1964.

1. This is to advise you of the right to appeal to the Appellate Division of the Supreme Court, Fourth Division.

2. This appeal must be taken within thirty days from the day of sentence.

3. This appeal must be by the service of a written notice, in duplicate, on the County Clerk who shall forthwith transmit to the Clerk of the Appellate Division the duplicate notice of appeal upon which shall be endorsed the date of the filing of the notice.

4. A third Notice of Appeal must be served upon the District Attorney.

5. The effect of filing a Notice of Appeal will be to require the court stenographer to make and file in the office of the Steuben County Clerk, two copies or transcripts of the stenographer's minutes of the entire proceedings.

Upon the order of the trial Judge, or upon the order of any Appellate Court or Judge, and upon such conditions as such Judge thereof may impose, the Clerk, without charge, shall furnish one of said transcripts to the defendant and/or his counsel.

Having advised you of your right to appeal by this writing, I now ask you if you desire to appeal this conviction, and further that if you wish to do so, I will serve and file the necessary notices of appeal.

____

I do desire that a Notice of Appeal be filed and served on my behalf. _______

I do NOT desire that a Notice of Appeal be filed and served on my behalf. _______

____________________ Date

____________________ Defendant

There are probably many reasons why counsel are generally unavailable. One reason rarely stated so boldly is:

> Criminal law is grubby. It is one step up from the bottom of the Attorney's social scale (People who Defend Murderers are in a Different Status than the average Criminal Lawyer who is a "Plea Broker") - the lowest animal in the Legal Profession is the Compensation Lawyer. Most crime is committed by socially unacceptable people who have no money - that's the usual reason for their crime, and they naturally can't pay. But, the amount of work to defend one of them is the same as if they could and often the police and Court harass an Attorney far more than if he is working for a paid retainer. So, when once in a blue moon a solvent, non indigent commits a crime - even a petty crime - it is a chance to recoup loss for the lawyer his agonized family retained. Criminal fees are always taken in advance. If the Defendant is convicted he obviously won't pay later, and if innocent they (sic.) frequently get very righteous and refuse to pay too. Lawyers lack physical pain as a collection device and that is why they don't do as well as Doctors...Nobody can make a living doing Criminal Law if he is hired by the amateur, inept indigents and to get hired by the "money boys" you need a reputation - which you get while starving on indigent fees. Only a very few men in Rochester (or elsewhere) make a living on Criminal Law...
>
> For the rest of us it is either a "fun thing" or a favor to a friend or a good client - one of his employees got in trouble and he needs the guy to drive his truck, etc...[1]

In order to make a living, then, the criminal lawyer must operate "on a mass-production basis, relying on pleas of guilty to dispose of (his) caseload."[2] Probably few lawyers practice criminal law exclusively and their success tends to be proportionate to their trial experience, commitment, and availability. The type of client also affects their records.

The significance of these circumstances should not be lost in a study of migrants and the courts. Indigents in general, and seasonal farm workers in particular, are not the types of persons criminal lawyers would choose to represent in court. Seasonal farm workers, whether or not migrants in fact, generally suffer from language disabilities, ignorance of the law, and the handicap of not sharing in the larger culture. They may come to court dirty and disheveled, silent in the fact of obvious threats to their life and liberty, and generally uncomprehending of the significance of the criminality of their alleged offense. Moreover, in the eyes of the justices who man the courts of first instance they are incorrigible. For example, one evening a young resident migrant woman charged with a motor vehicle violation was brought before a town justice. Upon questioning she indicated the fine would hurt her financially because her husband had lost his job at a large produce processing plant This was compounded by the fact that the woman was unable to support their children because of an injury to her arm. But what seemed to bother the justice most was the fact that the woman appeared to be generally unconcerned about the situation which was exacerbated by her husband's continued drinking with friends and driving without a license. The justice appeared to be questioning the woman out of genuine friendliness and concern, but there is reason to believe he also wanted the researchers to comprehend just "what migrants were like." It remains that the researchers were even more impressed by the patronizing attitude of the justice.

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[1] Ibid., pp. 7, 69, 70.

[2] The Challenge of Crime in a Free Society, p. 129.

There is little doubt that migrants are not the most sought after clients. They will appear suspicious, almost hostile, or in the alternative, will assume a "step-and-fetch-it-shuffle" agreeing to virtually everything that is asked of them. Whichever, they are easily distinguishable from the average resident defendant charged with an offense and brought before the court. One white defendant charged with assault in the second degree (with a weapon) appeared before the same justice court and even before his lawyer arrived had attempted to get the charge dropped or reduced. He was not viewed very favorably by either the trooper or the justice, but certainly he would not be classified "an animal," as migrants were by that same trooper. Further, he was represented and had the charge reduced from a felony (up to seven years in jail) to a violation, which carried a maximum sentence of 15 days. By comparison, the migrant either would have been unrepresented or would have been treated with a mixture of condescension and contempt.

Still another reason for the general unavailability of counsel is the rather inconclusive constitutional requirement. The Sixth Amendment of the federal Constitution states that "In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense." This was generally interpreted as the right to retain counsel of one's choosing and applied only to felonies. That counsel was not a fundamental right in non-capital cases in state courts was clear until Gideon v. Wainwright, 372 U.S. 355 (1963). In that case the United States Supreme Court held that the Fourteenth Amendment obligates the states to guarantee counsel to indigents "charged with crime," not just felonies or non-capital cases. Yet, as late as 1966, the Court refused to hear a case in which an indigent charged with a misdemeanor has been denied counsel and convicted. (DeJoseph v. Connecticut, 385 U.S. 982 (1966); memorandum decision.)

New York State and a few other (California and those states in the Fifth Judicial Circuit) have extended the right to assistance of counsel to all but traffic violations, supra, pages 12, 13. The extent of counsel for migrants in the courts of Orleans and Steuben Counties is examined in the next section, but for now it is worthwhile to discuss and to compare generally the types of counsel available.

Types of Counsel

Retained Counsel

For purposes of comparison a sampling of justice and county court cases not involving migrants was taken. These cases were used as a standard. When counsel appeared, they were often retained. But it is difficult to generalize about retained counsel, because they are a "heterogeneous group,"[1] consisting of private attorneys devoting full time to criminal practice, "courthouse lawyers," young men gaining experience, and general practitioners doing good deeds. They work on a retainer basis, collecting their fees in advance or securing payment in some other way, and they have some choice of clients.

An earlier study by one of the researchers offers somewhat more information about retained counsel in the Rochester City Court, which, it is assumed, will be suggestive of retained counsel in neighboring Orleans County and nearby Steuben County. In that study it was said:

> Drawing a profile is hazardous, but it is possible to say that typically retained counsel are 42 years old and have practiced some criminal law for approximately 7½ years. They represent between 10 and 19 defendants a year, generally are not assigned any of these cases, and are retained by clients after their arrests but before their first appearance in court. Counsel work with a case for 65 days, charge a fee of $390.00 for misdemeanors and $100.00 for violations, and are successful in 65% of their cases. If they accept any assignments, they will defend only one to four cases per year and will spend on the average of 15 days less than on cases in which they are retained.[2]

The Steuben County Assigned Counsel Program

The defender program in Steuben County resembles retained counsel more than the defender program in Orleans County. It operates through an administrator who assigns counsel to defend indigents as needed throughout the large county. As with defender programs throughout New York State, it developed out of the legislative requirement that all cities and counties have one of the four possible types of defender programs by December 1, 1965.

Upon the passage and signing of the so-called Anderson Bill on July 16, 1965, the Steuben County Bar Association appointed a committee, headed by the present administrator, William J. Holbrook, to investigate the need and to make suggestions. The committee suggested an assigned counsel program rather than a public defender because of the large land area--it is the only county in the state that has three county court houses and it is larger than the State of Rhode Island--which would necessitate a public defender and at least two assistants to cover the three larger cities in the county. Also it was necessary to choose between either an assigned counsel system or a public defender. The committee reported back that it believed the administrator could be the county attorney who already had a staff and the resources to man such a program on a part-time basis. The committee's recommendation was not approved by the New York State Judicial Conference because of the possible conflict of interest. The County Bar Association and the Board of Supervisors then suggested that

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[1] Dallin Oaks and Warren Lehman, "Lawyers for the Poor," Trans-action (July/August, 1967), Vol. IV, No. 8, p. 26.

[2] Mahood, "Defending the Poor...," p. 76.

Chairman Holbrook, who had practiced primarily criminal law for twelve years, be appointed, which was done. On December 1, 1965, Mr. Holbrook was hired as administrator to serve for one year subject to reconfirmation on a part-time basis at the same salary as the assistant district attorneys. (He has been reconfirmed five times and his salary raised to $5750.)

Administrator Holbrook, a graduate of the University of Rochester and Syracuse University Law School, is a native of this area. His interest in criminal law is evidenced by the fact that he has practiced criminal law since his admittance to practice in 1953. He is also vice president of the New York State Defenders Association. Holbrook's office is somewhat characteristic of the man with a sign on the door "Honest Lawyer One Flight Up" and the wood paneling which is pleasant and rather informal. (He noted with deserved pride that the room was personally remodeled.)

The program represents indigents in all criminal cases, except traffic violations which do not impose jail sentences, throughout the county. The procedure Mr. Holbrook follows is itself interesting and offers the promise of substantial representation for indigents. Originally he mailed a questionnaire to all attorneys in Steuben County stating that if an attorney did not want to be included on the list as an assigned counsel he must indicate: (1) that his law practice does not involve actual trial of cases (civil or criminal) or (2) that he is 60 years old or older. The result was that somewhere between 15 and 17 lawyers could not rule themselves out and were placed on the list. The list was divided into three areas of the county representing the three larger cities, Bath, Corning and Hornell.

Cases are distributed as equitably as possible based on what Holbrook describes as an "elaborate card indix system," as well as the gravity of the case, the "quality of representation necessary," the possibility of a conflict of interest, and the work load of the attorneys. In appeals the lawyer who was originally assigned the case is given the opportunity to continue the case. If he chooses not to take the case, Holbrook assigns another attorney.

All assignments are made by Administrator Holbrook, though technically this is the responsibility of the presiding judge who has advised the defendant of his right to counsel. In the town justice courts the judge contacts the administrator about any requests for counsel. Neither Holbrook nor other assigned counsel appear regularly in justice courts. In the county courts, though, Holbrook has been asked to be present at arraignments to determine whether or not a defendant wants counsel and is indigent. In the city courts of Bath, Corning, and Hornell, the justices call Holbrook about the need for assignment and the indigency determination.

As noted previously, if a defendant asks for counsel, indigency determination is made by Holbrook on the basis of whether he believes the defendant to "have money on hand to retain competent counsel."

Lawyers assigned by Holbrook are paid according to the schedule specified by the legislature. The fees are $15 per hour for in-court work and $10 per hour for out-of-court work, which also included travel and actual disbursements. The lawyers must submit vouchers in triplicate to Mr. Holbrook for approval plus the case record, and he submits these to the appeals judge for approval. If approved, one copy goes to Holbrook, another to the clerk of the appeals court, and the third copy to the attorney. All reports of assignments and dispositions are submitted to the New York State Judicial Conference each fiscal year and to the Bar Association and the Board of Supervisors annually. (See Figures 6 & 7, next pages for the 1968 and 1969 reports to the Judicial Conference. These reports include all indigents represented, not just migrants. Holbrook estimates that between 15 and 20% of the cases involve migrants; probably the former. It is impossible to verify this unequivocally, though an exhaustive search reveals only three of eighty-three defendants referred to his office in 1968-69 were migrants and only two of sixty-one defendants referred in 1969-70 were migrants. This represents only 3.6% and 1.6% respectively.)

The Orleans County Public Defender

The Board of Supervisors of Orleans County chose the more common public defender plan to comply with the statutory requirement for counsel for indigents charged with committing crimes. On November 11, 1965, the Board passed Resolution 127 authorizing a public defender to serve from December 1, 1965, to December 31, 1965, and thereafter to serve for a one year period at an annual salary of $4,500 plus "reasonable disbursements and expenses" subject to monthly audit. The appropriation for the first month of operation was $541.67.

The first public defender was John A. Russelli, a fifty-year-old local resident and graduate of Brooklyn Law School, who had served as Special Investigator for the Office of Price Administration and Village of Albion Attorney. His duties were outlined in Chapter 878 of the Laws of 1965, by which he was to represent "all persons charged with a crime in this County who are financially unable to obtain counsel."

As with assigned counsel in Steuben County, the standards for determining indigency were left to the defender himself. In a letter dated December 3, 1965 and mailed to village and town justices, Russelli suggested that in cases where there was doubt about the financial condition of the defendant "he be given the benefit of the doubt." In a letter to the researchers he indicated the standard was whether the defendant "could...provide for counsel without having to go deeply in debt." The standards are not clearly defined, and which was followed is uncertain. The affidavit that a defendant was to file suggests an inordinate amount of concern for finances and is the most detailed statement that the researchers encountered. (One of the researchers is quite familiar with the practices of the Legal Aid Bureau in Chicago and was quite disturbed by the significantly larger amount of "red tape" required in Orleans County.)

For some unknown reason, on May 5, 1966, despite the fact that the Board of Supervisors had established the office of Public Defender and had provided for the appointment of assistant defenders as the occasion warranted, the Orleans County Bar Association instituted a rotating assigned counsel plan with an appointed administrator. The ostensible reason was that the bar association "recognized that occasions may arise when the Public Defender's Office, through vacancy, illness, conflict of interest, or for other reasons, may be unable to extend the representation required by law." If this action was intended to be a reflection upon the work or the capabilities of Russelli, then his appointment as administrator is inexplicable. The suggestion that the bar desired "the fullest possible protection for indigent persons accused of crime" must be taken at face value, but it is still confusing to the researchers to note the existence of two different defender systems. To the best of our knowledge this does not exist elsewhere. And in a county as small as Orleans, it does not seem to make sense.

At any rate, Defender Russelli held office under this dual appointment until July 1, 1967,[1] when he was succeeded by Thomas D. Calandra, a young graduate of Drake University. Suprisingly, Calandra was hired directly out of law school even before he had passed the bar. Further, he claims in a rather jocular manner that he had no criminal law experience except two criminal and two violations cases when appointed. Though reappointed, he claimed interest in giving up the responsibilities of being public defender for full-time practice, and recently did so. His sincerity about not enjoying the responsibilities also is supported by his statement that he really had not developed a filing system for indigent cases--after some three years in this position.

As in Steuben County, the salary of the defender is relatively low compared with the potential or actual work required. In 1967, the salary was raised to $5200 and to $6400 in 1970. The County Board is generous in other ways, according to Calandra, allowing him $8413.75 to operate in fiscal 1968.

The work of Defender Calandra will be examined in detail in Chapter V, but the Annual Report to the Judicial Conference for fiscal 1968 is suggestive (see below). Most of the cases handled by his office resulted in reduced charges and convictions, the vast majority of which, 102 or 109, were on pleas. By comparison, in Steuben County, only 44 of 116 cases were disposed of by pleas, and the dispositions were generally more favorable to the defendants. Assigned Counsel obtained dismissals or acquittals in 27 of 116 cases. At first glance the Orleans County Public Defender was less successful than the Steuben County Assigned Counsel Plan.

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[1] Calandra remembers the date as being 1966, though Russelli seems to be correct. This is based on Russelli's letter dated April 20, 1967, to the Board of Directors of the Orleans Legal Aid Bureau, Inc., applying for the position of Executive Attorney. In that letter he stated that his present position was Public Defender. Practically nothing is known about the work of Mr. Russelli as defender, except for the statements of two persons who claim he was generally apathetic. Paradoxically, he has just been reappointed.

Figure 6

STEUBEN COUNTY PUBLIC DEFENDER ANNUAL REPORT
(Fiscal 1968)

I.

	CHARGES		
	Felony	Misdemeanor	Violation
A. Total Number of Defendants Referred for all Matters	33	35	15

B. Trial Level Dispositions	Plea	Trial	Plea	Trial	Plea	Trial
1. Convicted as charged............		1	6	2	2	1
2. Convicted of felony (less than charged)......................	2		XXX	XXX	XXX	XXX
3. Convicted of misdemeanor (less than charged).................	16		2	2	XXX	XXX
4. Convicted of violation (less than charged).................	1		6		3	1
5. Dismissed.......................	3	1	3	7		9
6. Acquitted.......................	XXX	1	XXX	3	XXX	
7. Mistrial........................	XXX		XXX		XXX	
8. Other dispositions..............						

C. Appellate Level Dispositions			
1. Affirmed.......................			
2. Reversed.......................			
3. Withdrawn......................			
4. Other terminations.............			

D. Cases Pending June 30, 1969			
1. Trial Level....................	29		
2. Appellate Level................			

II. Selected specific proceedings:

Hearing on motion to supress....______
Huntley hearing.................______
Sanity hearing..................______
Narcotic hearing................______
Coram Nobis hearing.............______
Habeas Corpus hearing...........1

Wayward minor...........______
Youthful Offender........6
Probation violation......______
Resentencing.............______
Extradition..............______

III. Defendants not represented after referral or for whom representation was discontinued:

Not indigent__________ Conflict of interest__________ In mental institution______

Other terminations_______ Specify______________________________

Figure 6
(continued)

IV. Cost of operation of plan: Total Cost $____________

A. Bar Association Plan

Administrator..............................	Salary	$ 4,250.00
Secretarial and clerical assistants........	Salaries	$ 1,000.00
Administration expenses....................	Expenses	$ 693.00
Attorneys (give number 14)...............	Fees	$ 8,271.48
Investigators, experts, others.............	Fees	$ none
Other legal expenses.......................	Expenses	$ none

Figure 7

STEUBEN COUNTY PUBLIC DEFENDER ANNUAL REPORT
(Fiscal 1969)

I.

	CHARGES		
	Felony	Misdemeanor	Violation
A. Total Number of Defendants Referred for all Matters	33	35	15

B. Trial Level Dispositions	Felony Plea	Felony Trial	Misdemeanor Plea	Misdemeanor Trial	Violation Plea	Violation Trial
1. Convicted as charged............	4		8	1	5	
2. Convicted of felony (less than charged)......................			XXX	XXX	XXX	XXX
3. Convicted of misdemeanor (less than charged).................	8		7	1	XXX	XXX
4. Convicted of violation (less than charged).................			6			
5. Dismissed.......................		4		11		
6. Acquitted.......................	XXX		XXX		XXX	
7. Mistrial........................	XXX		XXX		XXX	
8. Other dispositions..............	4					

C. Appellate Level Dispositions	Felony	Misdemeanor	Violation
1. Affirmed........................	1		
2. Reversed........................			1
3. Withdrawn.......................			
4. Other terminations..............			

D. Cases Pending June 30, 1970	Felony	Misdemeanor	Violation
1. Trial Level.....................	65		
2. Appellate Level.................			

II. Selected specific proceedings:

Hearing on motion to supress...______
Huntley hearing...............______
Sanity hearing................______
Narcotic hearing..............______
Coram Nobis hearing...........__2__
Habeas Corpus hearing.........______

Wayward minor...........__1__
Youthful Offender........__5__
Probation violation......__1__
Resentencing............______
Extradition.............______

III. Defendants not represented after referral or for whom representation was discontinued:

Not indigent__________ Conflict of interest__________ In mental institution________
Other termination__1__ Specify__DISMISSED BY REASON OF DEATH__

Figure 7
(continued)

IV. Cost of operation of plan: Total Cost $______________

A. Bar Association Plan

Administrator	Salary	$ 5,750.00
Secretarial and clerical assistants	Salaries	$ 1,600.00
Administration expenses	Expenses	$ 1,200.00
Attorneys (give number 18)	Fees	$ 7,282.03
Investigators, experts, others	Fees	$
Other legal expenses	Expenses	$ 1,720.79

Figure 8

ORLEANS COUNTY PUBLIC DEFENDER ANNUAL REPORT
(Fiscal 1968)

	Felonies		Misdemeanors		Violations	
	Plea	Trial	Plea	Trials	Plea	Trial
Convicted as Charged	0	0	30	0	5	0
Convicted less than Charged	1	0				
Convicted Misdemeanor less than Charged	20	1	38			
Convicted Violation less than Charged					8	
Dismissed		4				
Acquitted		2				
Mistrial						
Other						
	21	7	68	0	13	0

Appeals - 4 affirmed, 4 reversed
Other (selected) - 4 Coram Nobis, 4 Youthful Offender

Total Cost - $8,413.75

Defense Counsel in Other States

To gain perspective, provision for counsel for indigents in other jurisdictions will be examined briefly.[1] Twenty-five states have no provision for counsel for indigents charged with committing criminal offenses. Fifteen states have no legislative provision for counsel. In lieu of statutes, courts have either made counsel discretionary for felonies and "high misdemeanors" (over six months imprisonment, county court cases, or more than "offenses" and cases of a "summary nature"). Ten states have statutory provisions for counsel, but vary considerably in terms of their application.

In the southwestern states of Arizona, Colorado, Texas, and New Mexico, which have a large concentration of migrants, the Commission on Civil Rights reported that only Arizona guarantees the right to counsel but it is limited to high misdemeanors.[2] This seems to apply more to the exercise of the right than the statutory provision, which is at issue in this study.

By comparison, in New Jersey, another state that has migrants, the right to court appointed counsel applies throughout the state to all municipal courts and requires that at the "defendant's first appearance before the court (the judge) is to advise him of his rights (and) 'shall have him complete the appropriate form as prescribed by the Administrative Director of the Courts,' if the man is indigent."[1] Further, referral to the Public Defender is sought "*whenever practicable before arraignment*."[2] But Max Rothman, Division Director of the Camden Regional Legal Services, Inc., who is responsible for representing seasonal farm workers in civil cases in rural New Jersey, argues that these standards are "disregarded" and at best are of little help to seasonal farm workers, who are not arraigned until long after arrest. He cited one case in which a seasonal farm worker languished in jail for six months on a charge of auto larceny and motor vehicle charges arising out of the same event only to be convicted by plea to a lesser offense, for which he was sentenced the time served.[3] Other equally illustrative cases were cited to the same effect. One important factor is that the indigent himself must complete the affidavit stating indigency and requesting counsel. Nonetheless, these appear to be greater protections than are afforded migrants generally.

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[1] Lee Silverstein, "Prospectus for Misdemeanor Study," (Chicago: National Legal Aid and Defender Assoc., Sept. 8, 1967), p. 1 (Mimeographed).

[2] Commission on Civil Rights, Mexican Americans..., p. 54. But cf. ibid.. which notes Texas in its Code of Criminal Procedure extends the Gideon rule to misdemeanor cases.

In Florida, for example, the distinction between courts, Criminal Courts of Record and Municipal Courts, is also reflected in the types of counsel and the quality of justice afforded. Municipal Courts, in general, are revenue courts with jurisdiction over offenses (running from disturbing the peace to assault and battery with a deadly weapon), not crimes. The maximum penalties run to 90 days and $500.00 on each count. In the seven county rural area served by the Florida Rural Legal Services, Inc. the

> "Municipal Courts often have non-lawyers as Judges. Court appointed Counsel, even when requested, is non-existent. The Florida rules of Criminal Procedure do not apply to Municipal Courts and, therefore, the court's procedures depend upon the Judge. Unfortunately, these procedures are often not up to the due process standard in force in the Criminal Courts of Record.
>
> ...Their operation upon the poor is repressive and the quality of justice is dependent upon race and economic status."[4]

For the poor, especially the seasonal farm worker suffering under the handicap of dislocation from friends and family, the effect is numbing at the very least. In fact, it is claimed by another attorney operating under the auspices of the Office of Economic Opportunity that the "criminal law as it relates to migrants (is) an instrument of oppression."

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[1] Copy of letter from Stanley C. Van Ness, New Jersey Public Defender to Max B. Rothman, Division Director, Camden Regional Legal Services, Inc., June 2, 1970, which was made available by Mr. Rothman.

[2] Copy of letter from Max B. Rothman to Stanley C. Van Ness, June 9, 1970, which was made available by Mr. Rothman. (Italics in original.)

[3] Letter from Max B. Rothman to Stanley C. Van Ness, May 21, 1970.

[4] Letter from Alan M. Kuker, Acting Executive Director, Florida Rural Legal Services, Inc., Homestead, Florida, June 10, 1970.

Prima facie, then, the statutory requirements and the general adherence to these requirements for counsel makes New York State appear quite forward-looking and interested in the ideal of justice under law for all. Each city and county must provide for counsel for indigents if requested at first appearance, and the two counties under consideration here have established the necessary mechanisms. Whether the promise is realized, however, is the subject of the next section, in which the fate of the migrants in the courts is examined and reported.

CHAPTER IV

THE MIGRANTS IN ORLEANS AND STEUBEN COUNTY COURTS

The Number of Migrants in the Courts

An unfortunate, but common occurrence in studies such as this is the tendency to focus on numbers, not persons. The defendants become simply statistics, losing flesh and blood characteristics. The many hurts, the sadnesses they reflect, become lost in the enumeration of totals, means, and medians. However great the desire to avoid this, it is obvious that the researchers are not entirely successful. But it is well to remember that throughout this chapter it is persons, not numbers, with whom we are dealing. To reinforce this notion, a profile of the migrant defendant is drawn for the reader later.

Early in the research a public defender was asked to estimate the number of migrants who were charged with criminal offenses in a given year representing one of the years of the study. Reluctantly, because of the law forbidding recording the ethnic backgrounds of defendants, the defender guessed that at most fifteen per cent of the cases in this county involved migrants. The other defender arrived at a similar "guesstimate." This was the "ball park figure" with which the researchers were to work. The dockets revealed considerably fewer cases of migrant defendants.

In Orleans County, based on a census figure of 1716 migrants in 1968, the researchers expected to find approximately 515 migrant cases in the two years of the study. However, only 150 cases were actually uncovered and, by extrapolation, another 18 cases probably occurred. At most, then, only 4.8% of all the migrants doing farm work in Orleans County were charged with criminal offenses and were brought to trial.

The dockets show that Steuben County, despite its larger population, had fewer criminal cases involving migrants. In 1968 and 1969 a total of only 109 cases were found in the dockets examined. Using half that number to represent one year, the 109 cases are approximately 3% of the total migrant population.

A caveat should be observed: these figures do not represent all the criminal offenses committed by migrants any more than do the criminal dockets in any court represent all the criminal offenses which actually occur. They are only those cases brought to trial and officially disposed. Quite possibly the number of cases is much greater, because it is alleged that many offenses are never reported, particularly those occurring in camps and involving only migrants. One example is an alleged knifing (one migrant was cut across the throat near the jugular vein by another migrant). Both migrants were forced to move to another camp, and it is claimed that the incident was never reported to the police. A more common example is the illegal sale of alcoholic beverages in the camps, which is ignored by authorities.

Another important point is that there has been a significant decline in criminal cases involving migrants at least in part because there has been decreased employment of migrants. One Steuben justice who served an area with many migrants observed that there has been a reduction in cases from the peak in 1957 or 1958, when he had over 200 cases a year involving migrants, to only 50 cases in the two years studied. The justice's observation is corroborated by virtually all the other justices in both counties who have held office for any length of time. A justice who has served since 1948 noted the peak as being in 1960 in his court. The volume became a dribble in 1968 when the fields in his town were quarantined as a result of the discovery of the Golden Nematode fungus. Potatoes cannot be grown and sold (without washing), because of the fear of the spread of the fungus. Fewer migrants are required, and necessarily there are fewer migrant defendants.

The decline in cases is also reflected in the types of charges brought. Experienced justices claim that in the peak years of the late 1950's and the early 1960's criminal offenses tended more often than now to be crimes of violence, assaults in the first and second degree, and to a much lesser extent manslaughter and murder. In the years of this study, 1968 and 1969, the offenses have been primarily violations, such as disorderly conduct, public intoxication, harassment, and to a somewhat lesser extent assault third, a misdemeanor. In part this has resulted from the smaller numbers of migrants and the lesser interaction in crowded camps and in part this is the result of the increased ability of local residents to "control" the actions of the migrants. The latter observation is candidly admitted by many of the justices and law enforcement authorities interviewed.

Who Are the Migrant Defendants

As suggested earlier, there is a strong tendency to relegate the humans with whom we are dealing to the status of numbers, and we warned against this. In order to orient the reader, a profile of the migrant defendant is drawn, even at the risk of describing a non-existent person.

Sex

In the Orleans County courts studied 141 of 150 migrant defendants, 94%, were male. This is comparable to the sample of non-migrant cases in these same courts: 105 of 117, or 89.7%, were male. The Steuben County dockets revealed that 91 of 109 migrant defendants, 83.5%, were male, which is almost 11% lower than for Orleans. The percentage for non-migrants was a significantly higher 97.3.

Age

Most (65%) of the migrant defendants in the Orleans County courts studied were 30 years of age or older with a median age for all those charged with misdemeanors and violations of 37 years. In felony cases over 60% of the migrant defendants were older than 30 with a median age of 31. There was a significant difference in ages between the migrant and non-migrant defendants. The median age for non-migrants was 24 years in misdemeanor cases and 19 years in felonies.

The median age for migrant defendants in the Steuben County courts was almost identical, 38 years. (Insufficient data for the 3 felony cases rule out determination of a median age.) Non-migrant defendants in the Steuben justice courts reflected a median age of 24 years. (Only 1 was charged with a felony, and his age is unknown.)

Ethnic Composition

In Orleans County in the years of the study, 129 of 147 migrant defendants, about whom some information was available, were black.[1] None were white, 12 of 147 were Puerto Rican, and 6 of 147 were American Indian. These figures are consistent with the ethnic composition in the Butterer Census, except for the absence of white defendants. Approximately 2% could have been expected. Of the non-migrant defendants whose ethnic group is known, only 15 of 78, 19.2%, were black; 57 of 78, 73.1% were white; 2 of 78, 2.6%, were puerto Rican, and 4 of 78, 5.1%, were Indian.

In the Steuben County courts, 100 of 101 of the migrant defendants, about whom data exist, were black. The other defendant was white, though the Butterer Census reported no white migrants. Only 20% of the non-migrants were black and 80% were white. (The ethnic composition of 12 is unknown.) These figures are surprising, because of the predominantly white population of Steuben County.

Criminal Offenses With Which Charged

Most migrant defendants in Orleans and Steuben Counties were charged with committing minor offenses. In Orleans County 69 of 150 migrant defendants were found to be charged with public intoxication, 22 with assault in the third degree, and 12 with disorderly conduct. That is, 68.7% of the defendants were charged with one of three criminal offenses, almost half with public intoxication. This is significant, because it suggests that the combination of the drudgery of work and the relief of alcohol, generally cheap wine, results in disorderly conduct and crimes of violence. Nearly 20% of all the criminal offenses with which migrant defendants were charged involved violence (assaults, manslaughter, reckless endangerment, and rape).

By comparison, less than half of the non-migrant defendants in the Orleans County courts we examined were charged with public intoxication, disorderly conduct, and assault third. Instead the charges varied from robbery in the first degree involving five young black girls, who plied the world's oldest trade near the migrant camps, to issuing bad checks and vagrancy.

Again, in the Steuben County courts studied, 77 or 102, 75.5% of the migrant defendants were charged with committing public intoxication (45 defendants), assault third (17 defendants), and disorderly conduct

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[1] The data for drawing this profile were unavailable in some instances, so the numbers used will not always equal the total number of defendants.

(15 defendants). As in Orleans County, nearly 20% (20 of 102) of the cases involved violence and 4 cases resulted in death. The reasons for these criminal offenses appear to be the same as for Orleans County.

Similarly less than half (43 of 96) of the non-migrant cases finally disposed of in the Steuben County courts and used for comparison were public intoxication, disorderly conduct, or assault third. The remaining cases varied too much to allow for simple classification.

Thus, it is possible to draw a profile of the "typical" migrant defendant in Orleans and Steuben Counties. He is male, approximately 37 years of age, black, and is charged with minor offenses, public intoxication, disorderly conduct, and assault third. It might be added though it is somewhat premature, he is generally uncounselled and almost certain to be convicted of either the original charge or a reduced one. Unfortunately, this statistical man does not exist. The defendant who appears in the justice courts is real. The concern now is for the treatment accorded this real defendant.

Attitudes Toward and Treatment of Migrant Defendants

The attitudes of authorities and the resulting treatment of migrant defendants is not easy to document, but is attempted on the basis of statements made, docket data, and personal observations. We believe it is worthwhile to try to generalize. It is evident also that the attitudes conveyed in the courts (to an extent that cannot be determined) reflect the attitudes of the migrant defendants themselves. That is, the generally weak self concept of himself that the migrant holds seem to reinforce the image of the migrant that the authorities hold just as it seems to encourage the development of a mirror image on the part of the authorities. Because the migrant all too often tends to come in with a "step-and fetchit" attitude, the authorities may feel superior and condescending, and thus assume a patronizing attitude. Often the justices describe the migrant defendants as "immature," which seems a euphemism for the possible contempt they feel for the migrant. But this feeling reflects the image that the migrant projects before the authorities. A militant migrant (none were so described or suggested in our research) might well meet a different fate from the "typical" migrant in the courts. A migrant who was capable of exerting a real influence on other migrants, either in terms of organization or in terms of altering the structure and operation of local authorities in the towns, might well have been more deferentially treated by the authorities, but there is reason to believe he would receive harsher treatment in the courts. This is only speculation, but it is clear that the attitudes of the public officials and the treatment afforded migrant defendants tends to bear a direct relationship to the attitudes the migrants themselves convey. And these attitudes reflect the pathology described earlier. It is an unhealthy attitude born out of years of living hand-to-mouth in alien surroundings.

The Attitudes of Migrants in the Courts

The following discussion is based largely on interviews, discussions with persons working directly with migrants, and from materials gleaned from newspaper accounts. Direct observations of treatment of migrants in 1968 and 1969 were impossible. Personal observations of recent cases are only suggestive. Still, the researchers believe the following to be an accurate description of the migrant defendant in the court.

A typical comment from law enforcement officials, judges, and defenders is that "migrants do not want to get involved with the law." Instead, migrants try to handle intracamp problems without outside interference. Many reasons can be given, the most common being that crew chiefs assume leadership roles. They are responsible for contracting the migrant labor and assuring performance. They stand to lose from non-performance. Also, these crew leaders are within the camps and know the migrants. Further, if they lose control of the migrants, they lose their statuses. Intracamp problems are clearly their problems then.

Another reason migrants do not want to get involved with the law is that they are guarded and suspicious of outsiders following years of uprootedness. Feelings of inadequacy and hopelessness breed fear of authorities whether police, justices, health officials, or social workers. Black migrants from the south particularly, after years of subservience and menial labor, tend to be obedient and inconspicuous in order to survive.

The result is the migrant who "knows his place." Epitomizing this attitude is the migrant whose involvement with the law ran the gamut. He was described in Chapter II, but the description can profitably be repeated here. Born and educated to 9th grade in Puerto Rico, at the age of 20 he resident well known and disliked by the village police. He was considered friendless and unwelcome in his adopted home. He seems to have been alienated even from his fellow Puerto Ricans because of his Negroid appearance. To gain attention he had burned his arm with lighted cigarettes and had once put his fist through a glass window.

It is little wonder that when arraigned with two others on a charge of burglary in the third degree, a felony punishable by a seven year jail sentence, he was uncooperative and was subsequently committed to the Rochester State Hospital for a mental examination. The exam did not prove any mental problem, but it may be that the exam was inappropriate. He was, as one close observer states, "a mixed-up person that no one really liked," which may have been as much the psychological problem of living in an unfamiliar culture as it was a personality problem. The result was that he was sentenced to ninety days in the Orleans County Jail, the stiffest sentence of the three defendants. By contrast, one defendant was given an unconditional discharge.

Just over a month later he tried to escape from the jail with another prisoner only to be rearrested and returned to court on a charge of escape in the second degree. At the subsequent trial he appeared in court in a shirt that did not reach his waist and in dirty pants. The public defender, though it is claimed he disliked the boy personally, believed he could get the charge dismissed on the grounds that the other escapee had forced the boy to escape. The defender obtained better clothing for the boy and encouraged him to stop looking at his shoes and to look directly at the judge, which he had refused to do previously.

The sad conclusion to the case symbolized the hopelessness that many migrants feel. Rather than fight the charge, the boy, who the court interpreter was convinced had given up on life, pleaded guilty. The change of plea was a tacit acknowledgment that for this example of the uprooted there was no hope. The three year indeterminate sentence was anticlimactic, becuase the boy was long ago sentenced to a life of despair. It was not the law enforcement officials or the courts that condemned him--it was his attitude toward himself. The court simply verified the hopelessness and the correctness of his estimate of self worth. Ironically, this boy fits into a rather extended definition of "migrant," having lived in the village approximately five years and having begun to perform factory work. Remaining in this area changed neither his status nor his life style.

This attitude of hopelessness is reinforced constantly. Early one morning a YMCA Outreach worker from Rochester was shot in the leg by three hooded gunmen when he tried to protect some Orleans County migrants being threatened by unknown assailants. It appeared to be a warning to others who would protect migrants. The message conveyed to the migrants was equally clear--stay in their place. To date no arrests have been made of the gunmen.

Migrants who are asked to serve as witnesses demonstrate the same attitude of fear and suspicion. One district attorney claims that migrants will not testify for or against other migrants. A case was cited in Chapter II, in which one migrant at the notorious Welcome Inn knifed another migrant for cutting in on his dancing partner. The district attorney, while a private attorney, was assigned to defend the migrant. Counsel talked with others who admitted to having seen the alleged assault, but they would not help the "white boy" (the counsel) by testifying for the migrant. Counsel did not believe their reluctance stemmed from an interest in helping the man who was stabbed, but from reluctance "to get involved with the law." The charge was reduced to assault third on the counsel's motion and the misdemeanor was discharged, allowing him to return south with his crew. The reduction was not due to the efforts of the migrant, because he appeared content to plead and take his punishment.

A New York State policeman who has investigated many cases involving migrants, supports the conslusion that migrants will not testify. He attributes this to suspicion as well as to fear of troopers. Typically when he has gone into a camp, the migrants will close their doors and hide from him. Even when migrants are confronted directly, he states that they will not tell any more than they have to, and there is nothing that can be done to get the necessary information. It is to crew chiefs that police commonly turn for assistance, but there is no guarantee that any help will come from them.

There is reason to believe that crew chiefs can get migrants to testify, depending upon their desires. For example, one former crew chief who still acts as chief, though the camp has been formally abandoned by the grower, seems to have been able to manipulate migrants when he was charged with rape of a twelve year old migrant girl. The charge was never corroborated by any witnesses though the alleged rape was supposed to have occurred within the camp at a time of night when many persons were nearby. On the other hand, he had ample witnesses to testify to the fact that he was all over the area that night. The district attorney, not surprisingly is firmly convinced of the guilt and believes the former crew chief had fightened other migrants into not testifying. It may well be that he is correct, inasmuch as this same defendant was arrested a year earlier for possessing a dangerous weapon (a pistol) which he is reported to have used to harass others living in the camp. The village police chief claimed the conviction resulted from the one and only time he could obtain the necessary evidence to sustain the charge, though the ex-chief's employment of a pistol was well known around the village. The sentence was a conditional discharge (turning over the pistol to the police for six months), and the pistol had been returned to him before the alleged rape occurred.

Other reasons for the failure of migrants to testify may be the lack of formal education and the questionable reputations of at least some. Of the migrants whose formal education is known, the farthest any attended school was through the ninth grade. Most of them had attended school only to the sixth grade, and a State policeman believes their school attendance is exceptionally high for migrants. The docket survey seem to substantiate his estimate. One migrant who pressed charges against her husband signed the information with an "X." A former migrant also signed a deposition describing a homicide with an "X." The lack of schooling places them at a disadvantage in the courtroom, and certainly the migrants recognize this.

The questionable reputations of some migrants must discourage them from testifying. One justice who for twenty years worked as a foreman for a potato grower claimed that often crew chiefs enlisted workers from "pokies" on their way up from the south. That is, the crew chiefs bailed persons out of jails along the trip north to have a crew. Some migrants the researchers met in another setting during the study are known to have criminal records. These persons are not likely to want to have contact with legal personnel under any circumstances. What little docket data exist confirms the fact that the criminal records of migrants follow them. One migrant had been convicted to petit larceny in Virginia. Another had an assault third conviction follow him from another southern state. To these migrants, and probably to most, the less contact with the law, the better. A fear that serving as witnesses might lead to their becoming defendants may contribute to their unwillingness to testify.

Still another possible reason for this unwillingness to testify may be the type of treatment that migrants will sometimes receive in the courts. More will be said about this, but a few examples are worth noting here. Some Puerto Rican migrants on trial for committing minor offenses were, according to one observer, asked leading questions about their personal lives, not necessarily connected to the charges, to show the "immorality" of the defendants. Their answers tended to be incriminating. Another example reported to the researchers involved a county welfare director who was charged with fraud. The "resettled" Puerto Rican migrants who were called to testify sat on wooden benches the entire four hours during which the trial was conducted without drinks and without going to the rest rooms. Apparently they were unsure of the nature of their presence in court and even sat through the lunch hour recess while others attended to their natural desires. Not only did these women sit unquestioningly the whole trial, but, without money for baby sitters, tended their children who were also forced to endure the proceedings. This cavalier treatment may in part stem from language difficulties, but the presence of the court interpreter tends to rule out this reason. The alleged reason was fear of the authorities.

One more example derived from interviews is worth citing, partly because of the rather grim humor in it. A Puerto Rican migrant was brought into the same courtroom and was asked to plead to the charge before being advised of his rights. Then someone reminded the justice to advise the defendant through the interpreter, but the justice then forgot to ask the defendant again for his plea. The defendant was thereupon convicted. On appeal, the court interpreter, who unknown to the court was the cousin of the defendant, corroborated the claim that the defendant had not been advised of his rights before entering his plea. The appeal was successful but the court interpreter lost his job.

The deep-seated suspicion of courts seems most pronounced among Puerto Rican migrants. The reason--in addition to the fact they are alien to this area--seems to be the language disability they suffer. This disability and the possible inadequacy they may feel is, by analogy, strongly supported by the Hearings of the United States Commission on Civil Rights which examined the conditions under which Mexican-Americans lived in the Southwest.[1] Nothing need be added to that account.

Attitudes of and Treatment by Police

The treatment of migrants by the police cannot be documented directly but it is implied in a number of instances which have been cited to the researchers as well as the researchers' interviews with police. One State policeman who asked not be quoted called migrants "animals." Another trooper related a practice which he claims is less common in recent years and which implies a similar feeling. The practice was to go into camps when called upon to do so, to select the "biggest migrant," and to "give him a shot" (hit him with closed fist) to gain the migrant's "respect." The migrant was to understand that the trooper meant business and was to cooperate.

The notorious case of a migrant at the beginning of this report is also illustrative of the attitudes of the police toward migrants---in this particular instance of a "resettled migrant". Another instance related to the researchers involved two Puerto Rican migrants who had been picking cherries in Orleans County. Both were arrested by the State Police because of a minor fracas in the field. Because of the language differences, the police called an attractive, young woman who sometimes acts as an interpreter. When the interpreter arrived at the barracks, surrounding the accused were four State policemen, one of whom had his coat open to expose his pistol. The interpreter stated that instead of being frightened of the generally unkempt migrants, as expected, she was terrified of the Police. They believed one of the migrants, perhaps both, had committed murder in Puerto Rico. Their frustration at the lack of reciprocity with Puerto Rico, by which they could return the migrants, was quite evident to the interpreter. Moreover, they refused to believe that the one migrant, who had started the fracas with a story about committing murder to impress the other workers, was innocent. The interpreter, believing in the innocence of both men, labored long to convince the police not only that the migrant was guilty solely of fabrication but that the migrant's inability to speak and to understand English was real. The two men were not released until the interpreter was "safely" out of the area where the migrant would have to go to return to work. Needless to say, the interpreter remains highly critical of the Police.

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[1] Commission on Civil Rights, Mexican Americans..., Part III.

It is presently impossible to determine whether this attitude is universal among police in these counties, but that it exists at all is disturbing. More often the attitude is one of the disrespect for the migrants who represent potential, if not actual problems, for the police. Enough cases of public intoxication, disorderly conduct, and assaults do occur to prove problematic for police. The seamy side of life that police often see tends to color their thinking.

Illiterate, suspicious, socially fragmented migrants tend to engender some hostility among police. A strong inclination among police and justices is to identify all migrants in the criminal arrest records and dockets as necessarily Negro, not white or Puerto Rican. An example is the chief of police in one village. When asked to identify the migrants in the arrest records, invariably he selected Negroes despite the fact that the answers to the researchers' questions suggested Puerto Rican defendants should be included in the data as migrants. Puerto Ricans generally were not considered migrants though they had been imported by large processors to do both harvesting and canning. Moreover, relatively greater respect was shown the Puerto Ricans by this particular policeman, because they tended to stay more to themselves than do blacks and they tended to work hard in order to return to their native Puerto Rico when they had earned enough money. One reading is that the Puerto Ricans demonstrated greater adherence to the dominant values of the community. No whites were identified as migrants by the chief, either. though some justices were not so reluctant, especially where the defendants were "poor whites," which can be interpreted as "white trash." American Indians, as well, were seldom identified as migrants, though they had, in fact, left reservations to do farm work. This propensity to regard all migrants as blacks also suggests differential treatment by police.

The attitudes of the district attorneys in the two counties toward migrants cannot be clearly discerned. One district attorney suggests migrants are difficult in the courts because of their intransigence and their mobility. The migrants, according to him, will commit criminal offenses (particularly assaults) and then will either refuse to testify on their own behalf or will move on before the police can act. This is common whether they are defendants or witnesses. Also, as noted earlier, the migrants, according to the district attorneys, tend to take care of intracamp problems themselves. The result is that these prosecutors cannot obtain the convictions that they believe to be due and which might well benefit the migrants themselves ultimately.

The district attorneys also tend to criticize jury verdicts. One prosecutor is particularly critical of a jury verdict acquitting the former crew chief accused of the rape of a twelve year old girl. He blames this verdict and verdicts in three other felonies on the migrants and former migrants who will not testify for or against other migrants. The disposition signed by witnesses seem supportive of the prosecutor's beliefs.

Possible clues to the attitudes of the district attorneys toward migrants may be the pronounced tendency to reduce the offenses, particularly assaults. One district attorney suggests that most assaults between migrants, though involving knives (which makes them at least assaults in the second degree and punishable by up to ten years), are equivalent to persons "like us, slapping with hands" so the charge is "knocked down" to assault third, a misdemeanor. This practice is revealed often in the dockets. The attitude seems to be that, as the other district attorney stated, migrants have a completely different moral outlook and must be treated accordingly. That is, migrants live differently from whites, so fights, for example, are not so serious as fights between whites. Migrants are used to expressing themselves physically, so a knifing is analogous to a threatening gesture or word by a white. This may well be a practical attitude, whatever the significance to migrants. For example, in one case a district attorney refused to reduce a charge of manslaughter to assault second in exchange for the defendant's guilty plea. The jury brought in a verdict of guilty to assault third,a misdemeanor, despite the fact that the defendant's common law wife died as a result of the slapping he admitted giving her. The defender's obvious relish in relating this story of success reinforces the notion that the district attorney had not read the prevailing attitude of the community correctly. The point that he was making is that the communities studied here regard the migrants as "different." The district attorney, then, is encouraged to entertain the same belief.

Attitudes and Treatment of Migrants in the Courts

The most precise sources of information about the attitudes toward migrants in the courts are the court dockets. They reveal the charges, release procedures, dispositions, and attention to the rights of migrant defendants. We will turn to the docket data shortly, but the justices and other court personnel themselves reveal much, however indirectly. One defender in his lighthearted and casual way referred to a migrant as a "coon." While the researchers listened closely for other possible indications of prejudice, (none was detected), they remained suspicious about his sincerity in defending migrants.

Justices on guard because of the researchers' interest in their dockets rather naturally revealed little obvious prejudice toward migrants. More often it was suggested by cavalier treatment of migrants. An example is the discourteous treatment of the witnesses in the welfare fraud case. Another is the justice who wanted to make sure the researchers comprehended what migrants were "really like" by talking at length about one migrant. The migrant's husband had lost his job, was driving a car without a license, and was spending considerable time drinking with friends. The migrant's apparent unconcern for the gravity of the situation was to be duly noted by the researchers. This "reading" of the justice's intent was reinforced by his comment that little could be done for migrants. Education was hopeless. Migrants just "want to see what they can get away with" and remain in the county because it is located in the "best state in the union to get welfare." Yet, the justice can be regarded as a pleasant, friendly, conscientious man who the average resident could respect for his integrity. As a farmer and justice for many years he seems to have developed an attitude toward migrants that may render him unsympathetic.

On the other hand, blatant prejudice was evident in another justice who offered the researchers virtually no assistance in examining his dockets. When the purpose of the study was explained to him, he stated that the best thing the Migrant Center could do was to "get them [migrants] out of the county." More often justices claimed to hold no prejudice toward migrants and to treat them "like anybody else." Nonetheless, the justices do impose different standards. An example is the practice of giving conditional discharges to migrants who cannot pay fines so the migrant defendants do not have to be jailed at the expense of the county. Often the conditional discharges require the migrant to leave the county or town, to stay out of town, or some similar treatment.

Typically the justices go to some length to demonstrate lack of prejudice: One claimed he was a "compassionate" man (read "hard on all" defendants); another claims an understanding attitude because migrants are like "kids;" another suggests lack of prejudice by imposing harsh penalties on migrants and non-migrants alike, especially if they do not appear repentant; and still another justice states that migrants (read "blacks") are nice, decent people and he "wouldn't mind having one live next door."

A real concern of many justices who double as members of the town boards of supervisors is the threat of migrants staying past the harvest season and possibly collecting welfare checks. One justice asserted that there were no migrants because of strict zoning laws disallowing trailers (which, in fact, were in evidence on one rather deserted road) and because of a desire by the town board to keep migrants out. He expressed concern over the fact that migrants tend to stay and live on welfare, and he prided himself that his town had only spent $1500 on welfare in the fiscal year 1969-1970. The jail sentences reflect this fear, as well. In both counties a common sentence toward the end of the harvest season was the conditional discharge, meaning the defendant was released and admonished to get out of the town, county or state within 24 hours. One justice candidly admitted the discharge was dependent upon the defendant returning south with his crew the next day, which was the end of the season.

The attitudes of the justices are shown in other ways, such as with release procedures. Justices essentially have four options when a defendant is brought to court on his first appearance: try the case directly, grant the defendant bail and release him, release the defendant on his promise to return (Release on Recognizance), or commit the defendant until trial. The first option is most desired by justices and migrants alike because it disposes of the matter without further ado. The second option is not as often sought, because the justice has to bother to get the bail check, record it, and mail it in. The migrant obviously does not seek it, because bail is hard to raise. The third option is desirable, because the justice does not have to bother with the bail and the migrant is freed to return to work pending trial. Commitment is an obvious hardship on migrants, and justices dislike it because it requires the time and expense of transporting the migrant to jail and supporting him once there.

Thus, the option a justice chooses reflects his own attitude. For example bail in minor cases is a form of punishment in itself. One justice chose this option when a migrant was arrested and brought before the justice at approximately 1:00 in the morning. Bail was set at $100, and the justice refused to accept the personal check of a farmer from another town. The migrant defendant was not released until hours later when his benefactor located another farmer, known to the justice personally, to back the check. The justice himself rather proudly related this story to illustrate how he conducted his business. By the way, this same justice was "not available" the morning the State Police tried to find a justice before whom they could bring the former migrant who subsequently lost his toes and fingers due to frostbite.

This justice seems to be the exception, as does the justice who wants "to get them out of the county." Most justices, whatever their prejudices, tend to be more even-handed in their treatment of migrants.

It is presently impossible to draw any valid generalizations about the attitudes of juries in Orleans and Steuben Counties toward migrant defendants. One defender claims he has encountered "no hostility" toward migrants. In Orleans County there were only four jury trials involving migrants, three of which were conducted in the County Court and one in a justice court. There were acquittals in three of the four cases, and two of the cases were homicides. From this scanty evidence it would appear that juries were not hostile toward migrants. In Steuben County it is impossible to determine the attitudes of juries, because no cases involved jury trials.

In sum it can be said that the general suspicion and fear of authorities shown by migrants is bred out of years of uprootedness, and may well be warranted. Prejudice against migrants does exist, and it seems to stem from a belief that migrants are immature, immoral, uneducated, untrainable persons whose seasonal appearance must be accepted. In part this belief is fostered by the migrants' appearances after arrest, in court, and in interaction with the communities in which they find themselves. While this prejudice may result in injustice from the courts, it does not have to and, indeed, is not always obvious. Instead it seems to surface in the questions justices ask, in the way sentences are imposed, and in the way migrants are made to feel. It is a feeling most natives do not have to experience and therein lies the real significance to this study.

CHAPTER V

COUNSEL, OFFENSES, AND DISPOSITIONS IN THE COURTS

The Types of Charges and Their Origin

Types of Charges

In the courts studied most of the charges against migrants involved relatively minor offenses directed against the public order. In Orleans County only 8% were felonies, and over half, 88 of 150, were violations, most frequently public intoxication. The situation in Steuben County was virtually the same: 3% of the cases were felonies, and almost 60% were violations, primarily public intoxication. Generally little actual threat to public safety was posed, but the criminal offenses committed by migrants were typically high visibility offenses.

A partial breakdown of charges against migrants for the years 1968 and 1969 by order of frequency shows:

Orleans County		Steuben County	
Public intoxication	69	Public intoxication	45
Assaults (incl. aggravated)	27	Assaults (incl. aggravated)	18
Disorderly Conduct	12	Disorderly Conduct	14
Trespass	7	Poss. of Dang. Weapon	7
Vagrancy	6	Miscellaneous	5

Charges brought against their counterparts, non-migrants, were similar except for petit larceny, which was third most frequent. All of these charges were originally brought before the justice courts, and only a very few were not disposed of there. These charges are typical for an inferior court.

It should be noted that these figures represent actual defendants. That is, arrest and docket data reflect charges brought and may well represent more than one charge per defendant. The number of charges brought against a defendant may be 10% higher. An extreme illustration of multiple charges is:

> Vagracy, Resisting Arrest, Petit Larceny, Reckless Driving, Illegal Plates, No Operator's License, Unregistered Vehicle, No Insurance, No Inspection Sticker, Failing to Stop for a Stop Sign, A.W.O.L. (U.S.M.C.) and Crossing a Double Line.[1]

While multiple charges were brought against migrant and non-migrant defendants in the courts studied here, for accuracy and simplicity of data analysis only one charge per defendant was examined. Multiple charges were recorded, but the presence of the defendant in court, not the number of charges against him was of concern. Multiple charges against migrants often involved the combination of public intoxication and disorderly conduct, public intoxication and possession of a dangerous weapon, or public intoxication and trespass, etc. Generally, it appears that the high visibility of the public intoxication accounted for the arrest, not the companion offense. Thus, throughout the report the reader is alerted to the fact that these data represent actual defendants, not charges, which more accurately reflects the incidence of migrants in the courts. (An apparent exception involves 3 defendants who between them represent 26 charges of public intoxication, which tended to swell the number of public intoxication cases. However, each charge represented a separate arrest and must be counted.)

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[1] Mahood, "Defending the Poor...," p. 43.

These charges, it can be argued, reflect relatively minor offenses which seem to stem largely from the conditions under which the migrants work and live. For example, drinking relieves the monotony of work, but such drinking, especially on weekends after being paid, has led to disorderly conduct, trespass, and vagrancy. Trespass during a bout with the bottle may amount to nothing more than sitting on the porch of a white resident's house, failing to leave a bar, or wandering into a farmer's yard. Assaults and disorderly conduct, as well, tend to stem from drinking plus the scarcity of female companionship.

The rarer, major offenses, such as burglary, aggravated assaults, and homicides it appears are not so common as in years past. In Orleans County 5 migrant defendants were tried for assault with a weapon. Two more were tried for burglary and 1 each was tried for escape, manslaughter second, manslaughter first, possession of a dangerous weapon, and rape. In Steuben County only 3 migrants were arrested for committing major offenses. One migrant was arrested and tried for assault second (with a deadly weapon), another for manslaughter second (homicide without a dangerous weapon), and the third was extradited after being charged with murder.

By comparison, in these same courts in Orleans County, 14 non-migrants were charged with committing a felony. Five were charged with robbery stemming from a single incident, 4 were charged with burglary in the third degree, and 1 each was charged with burglary second, possession of a dangerous weapon, reckless endangerment, arson, and forgery. One non-migrant, charged with burglary third, originally appeared in the Steuben County justice courts supplying information.

Origin of Cases

Docket data can be particularly uninformative without an accompanying explanation. Thus, it was necessary to turn to the justices, police, defenders, or prosecutors to learn about the origins of the cases. The danger for the researcher is that these officials must rely upon memory almost as much as on the docket or occasional criminal information retainedin the dockets. Memories can be notoriously faulty and may be influenced by feelings. Nevertheless, there is reason to believe that a fairly accurate description of the origins can be pieced together

The most candid and succinct statement about the causes of migrant crimes was made by a justice who attributed everything to "booze, women, gambling." While the skeptic could counter that these factors probably account for all crime, the available evidence tends to support this observation. For example, a defender claims that cheap wine bought and consumed by migrants to lessen the impact of their working and living conditions is the primary contributing cause of criminal offenses committed by them. The recent stabbings of 4 migrants involved in a fight [illegible] a camp seem to support his claim.[1] It is reported that the cause of the fight was drinking. Equally reliable evidence is the fact that 69 of 150 migrant defendants in Orleans County were charged with public intoxication and 45 of 109 in Steuben County. A significant number of criminal offenses committed by migrants occurred in or near three notorious unlicensed bars. One brutal homicide and a number of less violent assaults occurred in the parking lot of the Brick Wall near Albion.

The next most commonly cited cause for crime by migrants was "women," or more accurately, the scarcity of women. A defender cites the case of the "resident migrant" who "did his woman in" by slapping her because she was "playing around with other men." The district attorney in the same county pointed out a similar case which occurred before the years of this study. A justice in Orleans County whose court is located on Route 104 told the researchers that over the years the assault cases in his courts often stemmed from fights over women's attentions. Similarly, he noted the presence of prostitutes from Buffalo and Rochester in or near camps on weekends, which he felt led to fights as well as to despair over the loss of paychecks in an evening. The presence of prostitutes is supported by the arrests of 5 young black women from Buffalo and Rochester. They were charged with robbery after having been arrested first on the charge of prostitution when white males "blew the whistle" on them. Another example cited by a justice involved a migrant woman who collapsed in the justice's house early on a Monday morning. She was bleeding from a puncture wound in her arm and sought the arrest of the man with whom she was living. When brought before the justice, the migrant protested that he had not been with the complainant at all that week end. Further, he claimed that when she left him she had no money but returned "flush" as a result of having prostituted herself. Still another case, in which a migrant cut another in a fight over a dancing partner, has already been mentioned. Finally, the homicide at the Brick Wall was deposed as having resulted from the attention paid to a woman by another migrant.

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[1] Rochester (New York) Democrat & Chronicle, August 9, 1970.

Too few arrests for gambling occurred to verify the allegation that gambling is another cause of migrant crime. Justices who were also growers claimed that gambling was a common activity on week ends. One justice was highly critical of the careless and reckless attitude of migrants toward money when gambling.

Other cases suggest even sadder origins. Two cases were cited in Chapter I: the "chicken thief" and the "kerosene thief." In another case, migrants were charged with burglary, later reduced to petit larceny, when they were caught stealing clothes from a camp store. To the justice they argued need.

Whether crew chiefs are a contributing cause of crime by migrants is unknown, but the possibility cannot be dismissed. The unsolved murder of a crew chief on Route 15, the "Darkie Trail," was noted in Chapter II. The Steuben County District Attorney speculates that other migrants "got even" with him, though the case remains open more than two years after. Another case related to the researchers involved a crew chief in Steuben County to whom an unhappy migrant owed $80. Apparently the migrant was dissatisfied with his job and with the crew chief. Wanting to return to Florida, he bought a "junk car," stole a license from another car in the camp, and drove off in the evening with his wife and family. Subsequent events are confusing, but the criminal information states that the crew chief chased the migrant in his own car loaded with other migrants, ran the errant migrant off the road, and fired shots into the migrant's car. The crew chief confessed to that much and was ultimately fined $100 for reckless andangerment, a misdemeanor. The justice's decision to fine rather than jail the defendant, he claimed, was based on the importance of the crew chief to the grower. The fact that charges of reckless endangerment (felony), possession of a loaded weapon, and aggravated assault, at least, could have been brought against the crew chief--and were not--is significant. It suggests that the justice, a former grower, considered the crew chief's relation to the grower more important than the life and safety of the migrant and his family.

The fact that crew chiefs are expected to "control" their crews is relevant to this discussion. The researchers have either located cases or have been told of instances where crew chiefs have availed themselves of weapons to maintain control. The example of the former chief in Orleans County who was convicted of weapons possession and later accused of rape, is illustrative. The exploitation of migrants by crew chiefs was given as a reason for migrant crime by both justices and police. One justice claims that only 1 of 5 chiefs is any"good." This could mean that the "good" chief keeps his workers under "control" and/or that he does not exploit his workers. A recent newspaper article suggests another problem.[1] In August 1970, a 15 year old migrant from Tampa, Florida was found "wandering for days in Wayne County [not far from the counties being studied], sleeping in abandoned cars and in woods, with only a suitcase full of apples for food." The boy, a fifth grader, reportedly was brought north by a crew chief, known to him only as "Jimmie," who "sneaked [him] up here." After a week's work the boy had not received any money.

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[1] Rochester (New York) Democrat & Chronicle, August 9, 1970 and Times-Union August 10, 1970.

Whether the amount of blame that residents want to place on crew chiefs is justified cannot be determined, but the possibility remains. Assuming chiefs to be a cause, a reason may be the roles they play. They are contractors of the migrant labor, they pay the wages received from the growers, they are expected to get performance to satisfy residents. The nature of these responsibilities places crew chiefs in a position of authority that necessarily must chafe some migrants. In any superordinate-subordinate relationship some trouble will occur, including criminal offenses. (The skeptic might consider the incidence of "white collar crime" against bureaucracies.)

Still another possible cause for migrant crimes, particularly assaults, is family problems. In this respect migrants have much in common with persons throughout the society. Family problems have been so significant that New York State, for example, established special Family Courts in 1962. But what might also aggravate migrants are the living conditions imposed by the nature of their work and travel. Small, crowded, uncomfortable housing for persons who spend long hours in hot fields must be dissatisfying at the very least. Also the fact that relatively few women accompany the men creates problems. In 1968, in Orleans there were 876 male and 261 female migrants, and in Steuben County there were 937 men and 384 women.[1] That is, among migrants men outnumbered women more than 2 to 1 in Steuben County and more than 3 to 1 in Orleans County. Extramarital relations, while not inevitable, are understandable. Also lack of facilities for children and lack of child-care provisions contribute to tension and other problems.

Incidents of assaults between husband and wife or between lovers occurred often enough to mention. One very sad case was related by a sympathetic, though patronizing, justice whose docket supported the basic information. A migrant pressed charges against her husband for assault third after her husband stabbed her with a knife. (She was bleeding when she arrived at the justice's house only a short distance from a camp.) The husband admitted the stabbing, which should have resulted in an aggravated, rather than simple, assault charge, and claimed his wife was hard to live with. To support his statement he lifted his shirt to reveal fairly new lye burns, which, he told the justice, were received in Virginia on the way to New York State. Yet, when the justice asked why they did not split up, the couple quietly demurred to the suggestion. Similar cases have already been cited to suggest the pathos of these, and other, uprooted families.

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[1] Butterer, Census..., p. 2.

While the justice's statement that the causes of migrant crime are "booze, women, gambling' is both derogatory and cynical, it contains too much truth. Drinking to relieve the tedium, the relative lack of female companionship, and the excitement of games of chance to pass the time may well be the contributing factors in the number and types of offenses committed by migrants. The experiences of servicemen, college students, and others forced to live under somewhat pathological conditions testify to the universality of the practice of turning to "booze, women, gambling" to relieve boredom. At this point, it can be said only that these are probably the proximate causes of crime among migrants, and they may continue to be so long as the working conditions remain unchanged, the life style of the migrant is maintained, and the residents of the areas in which migrants work hold to their present attitudes and practices.

Release Procedures

Another index of the treatment of migratory farm workers is the manner in which they are held to answer to the charges brought against them. Once a migrant is charged with a criminal offense and appears before a town or village justice, he may be bailed, released on his promise to return, committed to jail, or tried. Whether and how the defendant is released, reflects the attitude of the justice, as well as the justice's knowledge of the farm worker, his crew chief, or his employer.

Orleans County

At first the researchers were surprised to find that migrants charged with misdemeanors and violations in Orleans County were generally released pending trial. In Orleans County migrants were released on recognizance (ROR) almost half the time, 49.6%. They were bailed only about a fifth of the time, 21.5%, and were given no release almost a third of the time, 28.9%. By comparison, non-migrants were released only about a third of the time, 30.1%, bailed in about a quarter of the cases, 25.2%, and were not released in almost half of the cases, 44.7%.

A closer look and discussions with justices revealed the differences were based on what should have been immediately obvious: migrants posed a problem to authorities if not released or tried immediately. That is commonly they could not post bail, so unless released on recognizance, they were an expense to be borne by the county. Release to the crew chief or grower generally assured their return to court and insured their continued employment in the critical harvest. If not released, generally the case was disposed of at the time of the defendant's first appearance. The median time of dispositions of cases in the justice courts was 1 day, which justices, defendants, and arresting officers seemed to prefer. (Whether this is fortuitous for the defendant is examined later, but it is suggested that it may not be.)

Thus, on charges of violations and misdemeanors in the Orleans justice courts prima facie migrants were treated better than non-migrants, and it may be so, but it also implies a more servile status of the migrant. Further, it substantianted the evidence that the migrant is not committing a grave criminal act nor is he to be feared if free pending trial.

On the other hand, in the Orleans courts when a migrant was charged with a felony, the rule was no release, whether by demanding high bail or simply commitment to jail. Five of 9 migrants were granted bail, but the bail was so high it could not be met. (There are no data for 4 defendants.) The other 3 defendants were denied bail. Non-migrants were either bailed (5 of 10) or released (4 of 10). (Again there are no data on 4 defendants.) The 4 defendants released were women, which may imply differential treatment. Only 1 non-migrant defendant, charged with arson, was not released.

Steuben County

In the Steuben courts examined migrants charged with violations and misdemeanors were ROR'd almost half as often as in Orleans, 28.5% vs. 49.6%. Almost 70% of the migrant defendants were not released, but virtually all were tried at their first appearance in court. (Only half of all the migrant cases took more than 1 day.) Thus, commitment to jail pending trial was uncommon, as was the granting of bail. (Only 5 of 105, about whom data exist, posted bail.) The felony charges brought against migrants are too few to permit any generalization. No bail was granted in either the manslaughter or the murder case. The migrant charged with assault second was bailed.

Among non-migrant defendants whose cases were found in the Steuben justice dockets another pattern for release existed. Almost half, 55 of 109, were not released, but the median length of time any case took again was 1 day. A third were bailed, and only 15.6% were ROR'd. In the only felony charge brought against a non-migrant, a charge of burglary third, bail was set at $5,000.

It is necessary to interpret these data to determine their significance. Migrants generally were not required to post bail. They were either tried immediately or were released to return at a later date, often a week. This may reflect the lower economic status, lack of fear of migrants, and desire to return them to work. While generally beneficial to the migrant, release and delay might be more advantageous. This suggestion is examined in more detail later.

The treatment of non-migrants in the justice courts differs somewhat in the counties studied. In both counties the non-migrant was not released in about half the cases, but in Orleans he was more likely to be ROR'd than in Steuben. The reverse was true for release on bail.

The few cases involving a felony suggest the migrant would not be released. However, the charges are those considered serious: in Orleans they were manslaughter, escape, rape, aggravated assaults, and burglary, while in Steuben they were manslaughter, murder and aggravated assault. The refusal to release except on heavy bail, which is tantamount to no release may well be justified by the charge, though it is still possible that the more affluent defendant would be released. The high bail, $5,000 in a manslaughter case in Orleans County involving a migrant defendant, may be excessive. However, the same bail was required of a non-migrant charged with burglary third, which is even more egregious. The fact that the defendant was black may be significant. Thus, the release procedure itself may represent a type of punishment.

The Disposition of Charges in the Courts

The types of dispositions that occur in justice courts have already been discussed, supra page of Chaper III. The two primary categories are convictions and withdrawals/dismissals. Convictions include commitment to a penal or quasi-penal institution, fine, probation, bail forfeiture, or conditional and unconditional discharges. Withdrawals/dismissals are classified here as acquittal (by a jury), withdrawn/dismissed (by a judge, an arresting officer, prosecutor, or complainant), and youthful offender (the non-recorded conviction).

The majority of cases in the justice courts of both Orleans and Steuben Counties were disposed of by guilty pleas. The incidence of pleas in minor offenses was roughly 20% higher among migrants than among non-migrants. In Orleans County over 70% of the dispositions of migrant cases (misdemeanors and violations) resulted from pleas, while among non-migrants the percentage was just over half. In the Steuben County justice courts 93% of the migrant defendants charged with minor offenses pleaded guilty, while less than 75% of the non-migrants pleaded guilty.

In a sense, this is the way "it spozed to be." Jury trials were virtually non-existent. Even bench trials were infrequent. This seems to stem from the weak self concept of the migrant who, when arrested, "knows" that he has done something "wrong" and wants to "get it over with." Among non-migrants there is a 20% greater tendency to plead not guilty and force the justice to rule. It is not unlikely that these defendants have considered the possibility of the charge being reduced or dropped. Refusal to plead does tend to work for the defendant, though not always. In a recent case a justice imposed a heavy ($500) fine on a white youth who appeared to the justice to be unrepentant about sleeping on an American flag. The justice seems to have demonstrated the same attitudes toward migrants.

Dispositions in Orleans County

In the Orleans County justice courts the dispositions of cases were heavily on the side of convictions. (See Tables III and IV on the following pages.) Overall, in the years of the study and counting only final dispositions, the conviction rate was 83.8%. An even higher rate existed in migrant cases--87.6%. (The rate for non-migrants was still high at 78.2%.) This percentage was noticeably influenced by the virtual certainty of conviction in violations. The conviction rate was 97.7% for migrant defendants. It was still high for non-migrants, at 88.4%. The conviction rates for migrants and non-migrants in misdemeanor cases follow the same pattern as for violations (77.6% vs. 69.1%).

Differences occurred between migrants and non-migrants in felony cases. Of 9 migrant defendants charged with felonies, and about whom data are available only 4 were convicted. In all the withdrawals and dismissals, 5 cases, the defendants had counsel. This may explain the difference, but other factors might be considered. For example, 1 case was disposed of by a youthful offender treatment, meaning the conviction never goes on the record (unless the defendant is convicted again and the court desires to resurrect the previous charge) and is available only to youths who are at least 17 and not yet 19 years of age. Another case involved the previously mentioned rape of a 12 year old girl by a crew chief, who, it is claimed, blackmailed witnesses into not testifying against him. Another charge was dismissed by the court on the defendant's pleading guilty to a second charge of petit larceny. (However, the conviction for petit larceny carried the maximum one year penalty and may represent the justice's attitude toward the plea negotiation on the first charge.) Two acquittals of manslaughter charges appear to have resulted from the inability of the prosecutor, but he offered other reasons. His reasons were that the incidents occurred in or near camps and in both cases witnesses were migrants who would not testify. It could be that the juries, made up of local residents, perceived the cases as inevitable problems with migrants. (As one person said, "just a couple of blacks cutting themselves up." This remains only speculation, since we cannot go behind the legal protections shielding jury deliberations from public scrutiny.

The conviction rate among non-migrants charged with felonies was 67%. Two of 3 whose cases were tried were convicted. One defendant was convicted of arson and the other was convicted on all 32 counts of forgery! The dismissal involved a burglary. Six cases never went to trial, having been no-billed by the grand jury. For some inexplicable reason, the dispositions of charges against 4 non-migrant defendants cannot be found. A perplexed and embarrassed clerk was even more disturbed then the researchers.

TABLE III

DISPOSITION OF MIGRANT CASES - SELECTED ORLEANS COUNTY COURTS - 1968, 1969

CHARGE	Committed to Penal Institution	Fined	Probation	Bail Forfeited	Conditional Disch.	Unconditional Disch.	SUB TOTAL	Acquitted	Youthful Offender	Withdrawn and Dismissed	No Bill	Other	SUB TOTAL	TOTAL
Felonies:														
ARSON														
ASSAULT 2d	1						1						1	2
ASSAULT 1st	1						1					2	2	3
BURGLARY 3d									1	1			2	2
BURGLARY 2d														
ESCAPED PRISONER	1						1							1
FORGERY												1	1	1
MANSLAUGHTER 2d								1					1	1
MANSLAUGHTER 1st								1					1	1
POSSESSION DANGEROUS WEAPON	1						1							1
RAPE 1st										1			1	1
RECKLESS ENDANG.														
ROBBERY 1st														
							4						8	12
Misdemeanors:														
ASSAULT 3d	8	4		1		1	14			7		1	8	22
CRIM. MISCH.	2						2							2
DISORDERLY PERS.	1	1					2							2
PETIT LARCENY	2				2		4							4
PROSTITUTION														
POSSESSION DANGEROUS WEAPON	1	1			1		3							3
RECKLESS ENDANG.	1						1							1
SEXUAL ABUSE														
TRESPASS	2				1	1	4	1		2			3	7
MISCELLANEOUS	2	5				1	8			1			1	9
							38						12	50
Violations:														
DISORDERLY CON.	2	3		3	1	2	11			1			1	12
PUBLIC INTOX.	25	21		9	4	9	68			1			1	69
VAGRANCY		5				1	6							6
MISCELLANEOUS						1	1							1
Sub Total							86						2	88
TOTAL	50	40		13	9	16	128	3	1	14		4	22	150

TABLE IV

DISPOSITION OF NON-MIGRANT CASES - SELECTED ORLEANS COUNTY COURTS, 1968, 1969

CHARGE	Committed to Penal Institution	Fined	Probation	Bail Forfeited	Conditional Disch.	Unconditional Disch.	SUB TOTAL	Acquitted	Youthful Offender	Withdrawn and Dis-missed	No Bill	Other	SUB TOTAL	TOTAL
Felonies:														
ARSON	1						1							1
ASSAULT 2d														
ASSAULT 1st														
BURGLARY 3d										1		3	4	4
BURGLARY 2d												1	1	1
ESCAPED PRISONER														
FORGERY			1				1							1
MANSLAUGHTER 2d														
MANSLAUGHTER 1st														
POSSESSION DANGEROUS WEAPON											1		1	1
RAPE 1st														
RECKLESS ENDANG.														
ROBBERY 1st											5		5	5
							2						11	13
Misdemeanors:														
ASSAULT 3d	1	3			1		5			6		2	8	13
CRIM MISCH.	1	2	1	2	1	1	8		2	1			3	11
DISORDERLY PERS.														
PETIT LARCENY	2	1			2		5			2			2	7
PROSTITUTION										1			1	1
POSSESSION DANGEROUS WEAPON	1	1				1	3							3
RECKLESS ENDANG.		1					1					1	1	2
SEXUAL ABUSE			1				1		1				1	2
TRESPASS		1				1	2			2			2	4
MISCELLANEOUS	1	8	1		3	1	14		1			2	3	17
							39						21	60
Violations:														
DISORDERLY CON.		7	1	2	1	1	12			3		1	4	16
PUBLIC INTOX.	5	10		3	2	4	24			2			2	26
VAGRANCY		2					2							2
MISCELLANEOUS														
Sub Total							38						6	44
TOTAL	12	36	5	7	10	9	79		4	18	6	10	38	117

Dispositions in Steuben County

Again, as in Orleans County, most defendants in the justice courts were convicted. (See Tables V and VI on the following pages.) Counting only final dispositions, 86.4% of the migrant and non-migrant defendants were convicted. The conviction rate for migrants was 93.1%, and in violations cases the astonishing convictions of 60 of 61 migrant defendants was recorded. The 92.1% conviction rate in misdemeanor cases, while lower, is still uncomfortably high. Of the 2 felony cases finally disposed in the Steuben courts, 1 defendant was convicted and the other's case was dismissed.

The overall conviction rate for non-migrants in these same courts was almost 15% lower than for migrant defendants. In violations cases only 80.6% of the non-migrant defendants were convicted, compared with 98.4% of the migrants. The proportion of convictions in misdemeanor cases was roughly comparable: non-migrants were convicted in 77.4% of the cases while migrants were convicted in 92.1% of the cases. No comparison can be drawn for felonies because there were no non-migrant felony cases finally disposed.

A breakdown of convictions shows that both migrants and non-migrants were most often convicted of committing violations, though migrants were more likely to be convicted of public intoxication and disorderly conduct, in that order. Non-migrant defendants were more likely to be charged with disorderly conduct than migrants (20 vs. 15 cases) but less likely to be convicted (6 out of 20 cases vs. 14 out of 15 cases). Non-migrants were less likely to be charged with public intoxication than migrants (14 cases vs. 45 cases) and only a little less likely to be convicted (1 out of 14 vs. 0 out of 45).

The differences in misdemeanor cases were more noticeable. Migrants were more likely to be charged with assault third than were non-migrants (45% vs. 15% of the cases), but somewhat less likely to be charged with petit larceny (11% vs. 17%). The biggest difference was in the category labelled "miscellaneous." Migrants were not usually charged with issuing bad checks, resisting arrest, or liquor law violation. More often the "miscellaneous" including menacing, possession of stolen property and narcotics possession. The conviction rate was virtually the same--approximately 60%. As indicated, the absence of final dispositions of non-migrant felony cases rules out comparisons with the migrant felony dispositions. A conviction was obtained in a manslaughter case, and an assault with a deadly weapon charge was dismissed after the grand jury failed to draw up an indictment.

Generally, then, in both counties it is obvious that the migrant defendant was more likely than the non-migrant defendant to be charged with a violation and more likely to be convicted. He was less likely to be charged with a misdemeanor, but, again, more likely to be convicted. None of the defendants had much chance of having the charges withdrawn or dismissed.

TABLE V

DISPOSITION OF MIGRANT CASES - SELECTED STEUBEN COUNTY COURTS - 1968, 1969

CHARGE	Committed to Penal Institution	Fined	Probation	Bail Forfeited	Conditional Disch.	Unconditional Disch.	SUB TOTAL	Acquitted	Youthful Offender	Withdrawn and Dis-missed	No Bill	Other	SUB TOTAL	TOTAL
Felonies:														
ARSON														
ASSAULT 2d										1			1	1
ASSAULT 1st														
BURGLARY 3d														
BURGLARY 2d														
ESCAPED PRISONER														
FORGERY														
MANSLAUGHTER 2d	1						1							1
MANSLAUGHTER 1st														
POSSESSION of DANGEROUS WEAPON														
RAPE 1st														
RECKLESS ENDANG.														
ROBBERY 1st														
MURDER												1	1	1
							1						2	3
Misdemeanors:														
ASSAULT 3d	6	2	1	1	4	3	17							17
CRIM. MISCH.														
DISORDERLY PERS.														
PETIT LARCENY	2					2	4							4
PROSTITUTION		2					2							2
POSSESSION of DANGEROUS WEAPON	1	2			1		4			3			3	7
RECKLESS ENDANG.														
SEXUAL ABUSE														
TRESPASS	2	1					3							3
MISCELLANEOUS	1	1			1		3			2			2	5
							33						5	38
Violations:														
DISORDERLY CON.	1	6			4	3	14			1			1	15
PUBLIC INTOX.	7	18			5	15	45							45
VAGRANCY	1						1							1
MISCELLANEOUS														
Sub Total							60						1	61
TOTAL	22	32	1	1	15	23	94			7		1	8	102

TABLE VI

DISPOSITION OF NON-MIGRANT CASES - SELECTED STEUBEN COUNTY COURTS - 1968, 1969

CHARGE	Committed to Penal Institution	Fined	Probation	Bail Forfeited	Conditional Disch.	Unconditional Disch.	SUB TOTAL	Acquitted	Youthful Offender	Withdrawn and Dismissed	No Bill	Other	SUB TOTAL	TOTAL
Felonies:														
ARSON														
ASSAULT 2d														
ASSAULT 1st														
BURGLARY 3d												1	1	1
BURGLARY 2d														
ESCAPED PRISONER														
FORGERY														
MANSLAUGHTER 2d														
MANSLAUGHTER 1st														
POSSESSION of DANGEROUS WEAPON														
RAPE 1st														
RECKLESS ENDANG.														
ROBBERY 1st														
													1	1
Misdemeanors:														
ASSAULT 3d	1	2	1				4			3		2	5	9
CRIM. MISCH.		1			1		2		2				2	4
DISORDERLY PERS.														
PETIT LARCENY	1	3				5	9			1			1	10
PROSTITUTION														
POSSESSION of DANGEROUS WEAPON		1					1							1
RECKLESS ENDANG.														
SEXUAL ABUSE														
TRESPASS		8					8			1			1	9
MISCELLANEOUS	1	8		1	4	2	16			5		4	9	25
							41						18	60
Violations:														
DISORDERLY CON.		8	1	3	2		14			6			6	20
PUBLIC INTOX.	1	8		2		2	13			1			1	14
VAGRANCY	2						2							2
MISCELLANEOUS														
Sub Total							29						7	36
TOTAL	6	40	2	6	13	4	70		2	17		7	26	96

Types of Dispositions in Orleans County

In the Orleans County courts less than half of the migrants were jailed (50 of 128), almost a third paid fines (40 of 128), and approximately another fifth (29 of 128) forfeited bail or were given unconditional discharges. Non-migrants were most often fined (36 of 79). In descending order the convictions were: jail, conditional discharge, unconditional charge, bail forfeiture, and probation.

Jail Sentences

The average jail sentence for migrant misdemeanants and migrants convicted of violations was approximately 43 days, but the median was 15 days, which reflects the tendency to impose the maximum for violations under the Penal Law. Most of the sentences were for public intoxication. There is little or no noticeable pattern among the individual justice courts in imposing jail sentences, except for public intoxication. However, the village courts, which had over 60% of the migrant cases, tended to jail migrants for the maximum 15 days. The other, smaller concentration of cases was in a justice court less than a mile from a large camp. The median jail sentence tended to be double that of the village courts. The difference seem to be explained by the types of charges rather than by the differences in the attitudes of the justices. The town courts had proportionately more assault thirds, and the village courts had more public intoxication cases.

The few felony cases in the justice courts showed a median sentence of 1 year, which cannot be considered harsh for the offenses. This seems to reflect the reduction from the more serious original charge and the willingness of the defendants to plead. There was no difference between jury and bench trials in terms of the length of sentences. The only jury trial resulted in a reduced charge and a year sentence, which was the same disposition as in bench trials. The longest jail sentence, 3 years, occurred in the case of the young Puerto Rican who pleaded to escape second despite the defender's encouragement to fight the charge.

The mean and median jail sentences for non-migrants were approximately the same as the median for migrants, but almost a third less than the mean sentence for migrants (16.4 days mean for non-migrants vs. 42.8 days mean for migrants). That is, not only were migrants more often jailed but in individual cases they were sentenced to longer jail terms than were non-migrants. This result seems to have been based on the fact that the charges were reduced from felonies, mostly aggravated assaults, to misdemeanors, mostly assault thirds. It also suggests that, though the charges were reduced, the migrant defendants were being punished for the violence of their actions rather than for the specific offense to which they pleaded guilty. The only non-migrant jailed on a felony conviction (arson) was a 26 year old white who was sent to Attica Prison. Thus, no valid comparisons between migrants and non-migrants can be drawn.

Fines

As noted, approximately a third of the migrants convicted were fined. The median fine imposed on migrants was $25.00, though the mean was a substantially higher $86.25. The latter reflects $500 fines imposed on 3 persons who are called migrants under an extended definition and who managed an unlicensed tavern. The defendants, however, did not pay the fines, preferring to serve 180 day jail sentences instead. The median of $25.00, while appearing to be inconsequential, is severe in the case of migrants. In 1967 nationally migrants were paid an average of only $10.35 a day or $51.75 a week, out of which housing (typically between $15 and $25 per week, and sometimes up to $40), food, and clothing must be paid. The median fine, then, represented approximately a day and a half wages for the migrant. By comparison, almost half of the non-migrants were fined, and the median was lower than for migrants ($22.50).

Other Sentences

Bail forfeiture and unconditional discharges were the next most frequent dispositions of charges brought against migrants in the justice courts. In 1968 and 1969 13 of 150 migrant defendants posted bail and later did not appear, thus forfeiting it. Again, this may reflect an attitude of migrants that arrest is tantamount to guilt and the payment of the bail was the sentence. Non-appearance is an automatic conviction in minor cases which do not justify issuance of a warrant. Migrants may perceive the first appearance and posting of bail as the trial.

Nineteen of 128 convictions resulted in unconditional discharges (suspended sentences). The significance of this disposition is unknown. The implication is that the migrant in the fields is better than the migrant in jail whether on the original sentence or because of inability to pay a fine. Actually, the paucity of cases renders any conclusions about bail forfeiture and unconditional discharges suspect.

For non-migrants the percentages of bail forfeitures (7 of 79) and unconditional discharges (9 of 79] were roughly comparable to those for migrants. A bigger difference was evident in terms of probation. No migrants were placed on probation, while 5 of 79 non-migrants were. But this is not a particularly significant set of statistics and it would be difficult to supervise migrants serving probation.

While the number of non-migrants given conditional discharges is small, almost twice as many of the non-migrants (13% vs. 7%) were given conditional discharges then migrants. The reasons for the differences vary so much that no single explanation will suffice. Conditional discharges were most frequently granted migrants in public intoxication cases ("refrain from all drinking for one year," "get out of the state," "report to the court for 60 consecutive court nights"). The anticipated result was that the defendant would make himself scarce in the future.

In cases involving non-migrant defendants conditional discharges tended more often to be stay away from wife's (friends etc.) apartment," "make restitution," or "stay out of further trouble."

Types of Dispositions in Steuben County

Unlike Orleans County, the migrant defendants in the justice courts of Steuben County were more likely to be fined than jailed if convicted. Almost a third of the migrant defendants were fined, while less than a quarter were jailed. Approximately a quarter were given unconditional discharges, followed by conditional discharges (16%), probation (1%), and bail forfeitures (1%).

Non-migrant defendants, as well, were treated somewhat differently by the Steuben justices, except for fines, which also ranked first among the types of dispositions. Over half of the non-migrant defendants were fined, almost 20% were given conditional discharges, followed by jail and bail forfeiture (8.6% each), unconditional discharges, and probation. While the migrant defendant in Steuben County appears to be better off than the migrant in Orleans County, he is jailed almost three times as often as the non-migrant in Steuben County.

Jail Sentences

On the average, the migrant defendant, if jailed, served 25.7 days, though the median was 12.5 days. This includes both violations and misdemeanors. No data exist for felony dispositions. (His counterpart, the non-migrant fared just about as well. If jailed, he served a median of 15 days.) Thus, the migrant tends to serve almost the maximum time allowed under the Penal Law for violations. On the other hand, the 12.5 day median is a short sentence for misdemeanors. However, it remains that any jail sentence works a hardship on migrants that may not be so serious to the non-migrant. While in jail the migrant defendant will not be paid, which is his only reason for traveling north. The non-migrant defendant may also lose pay, but not necessarily. Employers have been known to help employees, and the defendant's family can at times receive welfare checks while the defendant was in jail. The migrant defendant's family would be less likely to receive the same benefits.

Fines

Most of the migrants (32 of 94) and non-migrants (40 of 70) were fined. The median fine imposed on migrant defendants was $18.75, approximately 40% of their estimated weekly pay, which is a significant punishment, but still preferable to jail. (It is interesting that jail sentences were less often imposed here than in Orleans County, where great opposition to paying for unwanted "guests" was so often expressed.) Non-migrant defendants were fined a median of $25.00. By comparison then not only was the migrant defendant more likely to be fined in Steuben County than in Orleans, he was more likely to be fined less ($18.75 vs. $25.00). Also the fines for non-migrants were higher in Steuben County than in Orleans ($25.00 vs. $22.50) and by comparison, higher for non-migrants than for migrants. Thus, of the counties, Steuben justices tended to impose fines that were less prejudicial toward migrant defendants.

Other Sentences

More migrant defendants in the Steuben County justice courts were given unconditional discharges than in Orleans County (25% vs. 15%), more were given conditional discharges (16% vs. 11%), and the percentages for probation were virtually the same (1% vs. 0%). The percentages of bail forfeitures were significantly higher in Orleans County (almost 9 times as many as in Steuben), but this reflects the greater tendency to bail defendants in Orleans than in Steuben. Orleans justices tend more often to grant bail (21.5% vs. 4.8% in Steuben), which goes far to explain the difference. It does not explain away the difference entirely, however, and no reason can be given.

As indicated, the Steuben justices tended most often to fine non-migrants (almost 60% of the cases), followed by conditional discharges, which were a distant second (18.6%). The percentages for the remaining dispositions were fairly consistent. Noticeable was the reluctance to jail any defendants.

Too few felony cases were found to permit a satisfactory discussion or generalization about sentences of migrants versus non-migrants.

Length of Time of Dispositions in Orleans County

Another index of the treatment of migrants, indeed any defendants, is the days that the court takes to dispose of a case. This does not necessarily represent the number of days the defendant is held in custody from arrest to final disposition, however. We have al[illegible] examined release procedures, which shows that most migrants did not remain in jail pending trial. Instead the disposition times actually represent the amount of inconvenience and suspense that a defendant may experience,[1] though, in fact, the disposition time (from first appearance to final disposition) may reflect the defendant's time in custody. Obviously, if in custody, the longer it takes to dispose of the case, the longer the defendant languishes in jail. The recent escape of 24 prisoners from the Monroe County Penitentiary highlights the problem for many defendants.[1] Held in custody, unable to work, be with friends, raise bail, retain a lawyer, or obtain evidence or witnesses on his behalf, the defendant who remains in pre-trial custody suffers considerably regardless of the outcome of the case. The anticipation and apprehension may be so great that defendants will go to extremes to gain their releases.[2]

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[1] Delay may also work to the advantage of a defendant. One of the researchers in another study reported that "the longer a case takes, the greater the chance of a favorable disposition. [In the Rochester City Court] retained counsel took the longest time per case, 65 days, and had the highest dismissal rate of any counsel. At the other extreme, defendants without counsel, particularly public intoxication defendants, had the charges against them disposed of in only 2 days, and 80% were convicted...Yet, the law of diminishing returns seems to be operative: between these time extremes there is an optimal point beyond which additional time is disproportionate to the success of the disposition." Mahood, "Defending the Poor...," p. 129.

For most of the defendants in the justice courts in Orleans County pre-trial custody was short or unknown. Cases involving migrants charged with minor offenses took a median of 1 day suggesting an almost excessive concern for dispatch of cases, though such speed may work in the migrant's favor. That is migrants can return to work more quickly than if there were delay. The mean of 15.7 days suggests some cases were not so promptly disposed of, and that convictions were common. Generally, the longer the disposition, the more likely the defendant had been released on bail or on his recognizance. By comparison, minor cases involving non-migrants were disposed of in a median time of 17.5 days. Again, most of these defendants had been released on bail or recognizance.

One fact that does not clearly emerge from these data is the number of cases disposed of in one day, which involved public intoxication and overnight commitment. Not uncommonly migrants and non-migrants who were arrested for public intoxication were held overnight on the grounds that they are incapable of comprehending the charges or the rights they enjoy, such as counsel. The result is that occasionally the overnight commitment serves as the sentence, though more often fifteen more days, the maximum under the law, are imposed on the miscreant. The more affluent intoxicated defendant, despite his incomprehensibility, may be encouraged to call his wife, friend, or lawyer, if he himself forgets to do so. Usually it is only the obstreperous non-migrant defendant (or, as a justice suggested, a "big shot" from out of town) who is committed overnight.

Felony cases, understandably, took longer, because indictments were drawn, delays were sought, juries were selected, and opposing arguments were made at trial. Typically, bails were set fairly high, resulting in commitment for the less affluent, particularly the migrant defendant. The median time for disposition of the felonies was 85 days, though the mean was only 68 days. For non-migrants, even fewer cases, the median was 55 days. Rather ironically, only 4 of 9 migrants were convicted while 2 of 3 non-migrants were convicted. The reader should recall that a factor operating in favor of the migrants was the inability of prosecutors to obtain witnesses to testify.

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[1] Rochester (New York) Times-Union, August 11, 1970.

[2] Time, August 17, 1970, pp. 8, 9, reports the gruesome details of a break by defendants who were standing trial and took hostages including the trial judge. The deaths of the defendants, their abettors, and the judge have aroused great public concern about the conduct of future trials and pre-trial custody.

Length of Time of Dispositions in Steuben County

As noted, generally the length of time a case takes, up to a point, the better the defendant's chances are for a favorable disposition. On the other hand, it seems that for migrants, the less time taken from work the better. Loss of time from work means loss of pay, confinement, and contact with feared authorities. In the Steuben County justice courts in 1968 and 1969 cases involving migrant defendants took a median of 1 day. (The mean was only 1.9 days.) Moreover, only 4.8% of the defendants were not released pending trial. Most migrant defendants, 67%, were tried at first appearance. The inconveniences attending arrest, custody, in jail or bail, adjournment, jury selection, etc., that may attend a criminal trial simply did not occur.

The problem with this seemingly satisfactory arrangement, obviously, is that almost 9 out of 10 migrants were convicted. From all the evidence the dispatch with which cases were handled was achieved by means of a minimum of legal protections that should cloak the defendant in a criminal trial. The constitutional rights guaranteed every defendant in a criminal trial appear to exist as they are convenient to the courts. Whether justice is done does not seem to be the issue in these trials, as far as can be determined.

This interpretation is supported by the 24 non-migrant cases which extended beyond what would a week's adjournment to the next court session. The median length of time for disposal of these cases, almost 80% of which were misdemeanors rather than violations, was 80 days. Further, 10 of these cases (42%) resulted in withdrawal or dismissal. This conviction rate of 58% is 20% lower than the overall rate for non-migrants and almost 30% lower than the overall rate for migrants. On the basis of these data we find that the longer the case took, the greater the chance for a favorable disposition; an opportunity generally not offered a migrant.

The only felony case for which the disposition time is known (other than extradition) took 73 days. The indictment was dismissed on the counsel's motion. Again, it can be argued that where the constitutional protections are afforded a defendant in a criminal trial including counsel the chances for a favorable disposition are increased. Here, atypically, counsel was retained by a migrant ("some black women got money together") and was able to win his case.

Counsel

The Extent of Counsel in the Orleans County Courts

Representation by counsel in the justice courts was extremely uncommon despite the statutory requirements. One reason seems to be the justices' belief that counsel is not required, though the dockets are written in such a way that justices ritualistically read the defendant his rights regarding counsel. In practically all the dockets examined (where the justice extended himself to write anything) defendants answered they did not want counsel. One time the researcher could not help but notice a defendant's "Yes! Yes!" when asked if he wanted counsel, which this unusual justice dutifully recorded. The 20 year old black non-migrant was subsequently represented by the public defender in one of his rare misdemeanor case appearances.

Because justices were so inconsistent in recording whether the defendants sought counsel, it is difficult to generalize about the failure of justices to adhere to the statutory requirement. The best that can be said is that in both counties most justices did advise the defendants of their rights, though the typically monotonous reading must have had as little meaning to the defendants as it did to the researchers.

In one village court at least 4 of 41 migrant defendants, all but 1 of whom were charged with violations, asked for counsel. None was represented. In a town court 4 of 21 migrant defendants sought counsel and received none. All were charged with misdemeanors, the maximum sentence for which was a year in jail, barring the exceptional case where a sentence could be as much as 3 years. In the remaining justice courts either the defendants did not request counsel or nothing was written down by the justices. The researchers are strongly tempted to draw inferences about the conduct of the justices who did not assure representation to defendants who asked for it, but cannot without more evidence.

Of the 150 migrants charged with criminal offenses in the Orleans County courts studied, only 10 had counsel. The percentage of defendants charged with misdemeanors and violations who were represented was a miniscule 1.5%, meaning only 2 defendants had counsel. The overall percentage of non-migrants with counsel was only slightly higher at 11.9%, but it was 21.9% for misdemeanors and violations.

In felony cases, the representation of migrants by counsel was significantly higher. Eight of 12 defendants were represented by the public defender or assigned counsel. Greater representation is explained by the fact that the County Court Judge, unlike town and village justices, was careful to make assignments.

Only 2 of 13 non-migrant defendants charged with felonies had counsel, and both were represented by the same retained counsel. However, 6 were released without trial when their cases were no-billed by the grand jury. The files containing the dispositions of cases involving 3 non-migrants could not be located in the County Court Clerk's office and the other defendant's case was taken to Family Court where it is closed to public examination.

The extent of representation of all defendants charged with misdemeanors and violations in the Orleans County courts studied seems low, but no comparable court studies are available. The only comparative data are from the Rochester City Court, which handles similar cases, and 14% of the defendants (more than twice as many as here) had counsel.

The Extent of Counsel in the Steuben County Courts

Again, inconsistency of recording data on the number of defendants requesting counsel was evident. Some justices seemed quite concerned about recording whether the defendant sought counsel, while others were unconcerned about that as well as about other matters. In the dockets examined all instances of representation by counsel were either recorded or clues led the researchers to ask the justice. As far as can be determined, the data here are accurate.

The rate of appearance of counsel was roughly comparable to that of Orleans County. Of 109 migrant defendants 6 were represented. (In Orleans 10 of 150 were represented, or 5.5% in Steuben vs. 6% in Orleans.) The differences in the rates of counsel for misdemeanors and violations between Steuben County and Orleans were equally negligible (3.8% vs. 1.5%). The percentage of migrant defendants charged with felonies and represented by counsel in Steuben County was identical to that in Orleans County, 67%.

The percentage of non-migrants represented in the Steuben courts was also comparable to that in Orleans. Of 112 non-migrant defendants 10 were represented (9.8%), while in Orleans it was 14 of 117 (11.9%). The only non-migrant defendant charged with felony in a justice court and later tried in the county court was represented by assigned counsel.

In both counties, then, using comparable data clearly there was a difference between migrant and non-migrant defendants in terms of representation by counsel. The sad tale is that in each county very few migrants charged with minor offenses were represented. Almost twice as many non-migrants charged with similar offenses and brought before the same justices were represented by counsel. The only bright spot in this otherwise dark picture is the fact that migrant defendants charged with felonies were generally represented. The reason seems to be greater adherence by county court judges to the administrative ruling by the Fourth Judicial Department, supra page 45 Chapter III. The next factor to consider is the satisfaction that counsel gave to their clients charged with crime in the justice courts.

Counsel's Record in Orleans County

The significance of counsel is often measured in terms of effectiveness--the ability to "win." Thus measured, counsel for migrants were not as effective as might be desired, gaining withdrawals or dismissals in 5 of 10 cases. In misdemeanors 1 of 2, was dismissed.

The dismissal occurred in an assault third charge, which not uncommonly will be withdrawn later by a calmer spouse, neighbor, or friend, who has had time to reconsider. In felonies, counsel for migrants won 4 of 8. In all but 1 of these cases the appointed public defender represented the migrant defendants. The other migrant was represented by assigned counsel.

These records of success do not suggest noticeable effectiveness, but the records for counsel for non-migrants indicate no better success, gaining withdrawals or dismissals in only 4 or 12 misdemeanor cases in the justice courts, though the same lawyer was able to win 1 of 2 felony cases he handled. Overall, defending non-migrants counsel were successful in only 5 of 14 cases. Thus, the public defender who represented all migrant defendants had a 50% dismissal rate. Counsel for non-migrants including this same defender who represented 5 of 12 defendants, gained dismissals in 35.7% of the minor cases.

The skeptical reader may challenge the researchers' measures of success and the seeming idealism in failing to recognize the significance of negotiated pleas. That is, a measure of success according to some observers of criminal law, is the ability to counsel to satisfy his client or at least to gain a reduction of the charge in return for a guilty plea. The more charitable refer to this plea bargaining as inevitable and useful. Opponents condemn this practice as a "cop out." The researchers tend toward the latter position. This is based on an earlier study of counsel for indigents in the Rochester City Court.[1] Counsel, retained and public defenders, were considerably more successful in obtaining dismissals of the charges against their clients. While the overall conviction rate in City Court was 68%, retained counsel gained withdrawals or dismissals in 65% of their cases. The public defender program, employing 2 defenders part-time, just shaded by the record of retained counsel, gained withdrawals and dismissals in 61% of the cases represented. This may not be common to all defenders, and indeed it was argued that the defenders in Rochester were uncommon, but it does strongly suggest that plea bargaining, the reduction of charges in return for a guilty plea, does not have to be the standard for effectiveness.

Plea bargaining is an important function that counsel can perform, especially those representing indigents and other defendants who may have previous convictions, but the result is still a conviction. So long as the adversary system is adhered to, it seems that counsel should prepare to "win," not accept the reduction and plea as the norm but even accepting plea bargaining, we can examine the work of counsel. Where migrants were charged with committing felonies, the defender and assigned counsel obtained acquittals in 3 cases. In none of these, it must be noted, did the prosecutor obtain witnesses to corroborate the charges.

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[1] Mahood, "Defending the Poor..., p. 145.

In the other successful case the defender obtained a Youthful Offender disposition for a young migrant charged with burglary third. (And the reader might recall the criticism of this disposition by an attorney that was cited earlier.) In the remaining cases, the defender can be considered successful-if plea bargaining is accepted as the measure. One migrant charged with burglary third had the charge reduced to petit larceny, a misdemeanor, but the defendant received the maximum penalty, a year in jail. A charge of weapon possession was reduced to a misdemeanor, but the defendant received the maximum penalty, a year in jail. A charge of weapon possession was reduced to a misdemeanor, and again the maximum jail sentence was imposed. In the remaining 2 cases, both of which were assaults, 1 was reduced to assault second for which a relatively light 1 year jail sentence was imposed and the other was reduced from assault second to assault third and a 32 day jail sentence was imposed. Thus, for the most part the reduction of charges, the successful aspect of bargaining, was achieved, but the sentences still reflected the severity of the original charge.

Comparing cases involving non-migrants, we find that in 4 of 12 misdemeanor cases counsel gained dismissals and withdrawals. Three of the 4 cases were handled by the defender. Two cases were YO'd, and a petit larceny charge was dismissed. The other dismissal occurred in a case involving alleged patronization of a prostitute. The remaining charges were all reductions and guilty pleas. In felony cases, as has been stated counsel was successful in 1 of the 2 cases he defended and the conviction resulted from plea negotiation. On the basis of plea negotiation counsel were successful in all but 3 cases, a petit larceny conviction, a violation of probation conviction, and a criminal mischief conviction. In terms of plea negotiation, then, counsel were successful in 9 of 14 cases. In the more absolute terms preferred by the researchers the record was 5 of 14, 35.7%.

Counsel's Record in the Steuben County Courts

Throughout, the importance of counsel has been stressed, and the reason given was that counsel offer to a defendant both an ally and expertise. It is particularly important to the generally inexperienced, uneducated, poor migrant who enters court suspicious and guarded in the face of authority and who lacks the strong self-concept necessary to a minimum defense. Counsel should be his mirror-image: experienced, educated, assured. The very presence of counsel alone should be a comfort. Whether, in fact, such comfort is derived from counsel depends upon counsel's ability to gain dismissals. Our measure of success, we repeat, is withdrawal/dismissal, not simply reduction of the charge or youthful offender, where possible. On this basis what is the record of counsel in Steuben County?

Counsel, all assigned, represented 4 migrant defendants charged with minor offenses. In only 1 case was counsel successful by the absolute standards preferred. In that case counsel secured a reduction of the charge from criminal possession to petit larceny and was successful in gaining a dismissal on his motion. In the remaining cases, assault third, petit larceny, and possession of a dangerous weapon (misdemeanor), the defendants were convicted and jailed. However, using plea bargaining as the standard, counsel were successful in all 4 cases. All were reduced from felonies. The most unusual case involved a charge of manslaughter in the first degree which was reduced to assault in the third degree. The attorney claimed the defendant "did his woman in" by "slapping her around." Death was attributed to a subdural hematoba, but the defender argued that it could have been prevented by prompt medical attention. The disagreement is supposed to have resulted from the fact that the woman had believed the defendant to be a "good man" on the basis of the testimony of the defendant's employer. However, the defendant was sentenced to time served (spent in pre-trial custody).

Two of 3 migrant defendants charged with felonies were represented by counsel, and counsel was successful in 1 case, managing to quash an indictment which charged assault second (with a weapon). This was the atypical case, in which a migrant, with help, retained counsel. The assigned counsel was not so successful, as his client was sentenced to 5 years on a reduced charge of manslaughter second. On the basis of plea bargaining both counsel were successful--both cases were reduced. If types of counsel are compared, retained counsel was more successful, whichever standard is used. But both lawyers have served as assigned counsel, and the lawyer who was retained has more often than any other lawyer represented migrants. The seeming difference in representation probably cannot be explained by the type of counsel, more likely other intangibles are determining.

Counsel for non-migrants were even less successful than counsel for migrants, winning 2 of 10 cases. A more accurate record is 2 of 9, because a case was dismissed after the death of the defendant before the trial. The records are identical, then, if that case is disregarded. In only 1 case was counsel assigned, and a conviction for a reduced charge resulted. Retained counsel were unsuccessful in gaining withdrawal or dismissal in 6 of 8 cases. But on the basis of plea negotiation, counsel were successful in 7 or 9, again disregarding the case in which the defendant died. All but 2 cases were either a reduction or a withdrawal/dismissal. Surprisingly, a non-migrant defendant retained counsel in a public intoxication case--and lost. Generally lawyers do not defend clients charged with public intoxication, and in the rare case in which counsel appears, the charge is commonly withdrawn or dismissed. More surprisingly, the defendant was a young (22), white, male. Speculating, we might suggest that the high visibility of the offense led to the charge or counsel appeared prior to the charge being brought and succeeded in having the offense reduced to public intoxication with a promise to plead guilty. The disposition of the 1 felony charge against a non-migrant defendant cannot be determined. Counsel was assigned, but no disposition appears in either the dockets, or the assigned counsel administrator's records.

Comparing the records of counsel in the two counties on the basis of "wins"--withdrawals and dismissals vs. convictions, counsel in Orleans County appear more successful. Overall, for migrant defendants the public defender in Orleans was successful in 50% of the cases he handled, while his counterpart in Steuben, assigned counsel, obtained withdrawals/dismissals in only 20% of the cases defended. In misdemeanor cases (counsel defended no migrants charged with violations) the public defender in Orleans was still more successful (1 of 2 vs. 1 of 4 in Steuben). In felonies, counsel for migrants had identical records. (In Orleans 4 of 8 vs. 1 of 2 in Steuben). This would suggest the public defender was more successful than assigned counsel, which is consistent with studies comparing the two types of defender plans.

Using plea negotiation as the standard for success, counsel in both counties "won" all their migrant cases. That is, either they obtained reductions of the charges in return for pleas or they obtained outright dismissals. No difference would appear between the two systems on this basis.

Comparing overall withdrawal/dismissal rates in non-migrant cases, the Orleans County defendants fared about 12% better (35.7% W/D in Orleans vs. 23% W/D in Steuben). Using only misdemeanor cases non-migrants in Orleans County still fared better (33% W/D vs. 23% W/D in Steuben). Further, the public defender in Orleans obtained withdrawals or dismissals in 3 of the 5 cases he defended, while assigned counsel in Steuben lost the only case defended. Again, the public defender appeared more successful than assigned counsel. Felonies cannot be compared, because the only felony in the Steuben County dockets involving a non-migrant must be considered "pending."

By the standard of plea bargaining, the records are virtually identical. In Orleans County justice courts 9 of 12 cases were reduced and convictions resulted, while in Steuben County 7 of 9 were reduced and brought convictions. The percentages are 25% convictions in Orleans vs. 22% conviction in Steuben. The records of counsel in felonies cannot be compared.

The relative greater success of counsel in Orleans County takes on importance because of the likelihood of the migrant defendant going to jail rather than being fined. Also if the migrant defendant were fined, he would pay more than the non-migrant defendant. While counsel in Steuben County appear less successful, there was less chance of the migrant defendant being sentenced to jail. More often he was fined, and the fine was less than for convicted migrants in Orleans County (median of $18.75 vs. median of $25.00 in Orleans County).

In reality, the percentage of migrant defendants represented by counsel (and to a somewhat lesser extent, non-migrants) is so small as to be insignificant. The crucial issue here, then, is not success of counsel, but the incidence of representation. Even if counsel were successful in 100% of the cases, it remains that they represented only 17 of 259 migrant counsel program, counsel claimed 27 days (5 hours of in-and-out-of court work) on his voucher. (See Chapter III, p. 55, supra.) and the other drew a six month jail sentence. Both were reduced from the original charge; however, what tends to render this meaningless is the fact that the same defendant and counsel were involved in both cases, which occurred in the same month. The dismissal came in the later case and may have reflected the six month jail sentence already imposed, as well as the fact that counsel appeared right after arrest. Also, counsel spent more time in the earlier case.

The other case in which a migrant was represented was the case in which counsel was originally assigned and subsequently--and atypically--was retained. Counsel appears to have entered the case very early (between first appearance and preliminary hearing), secured bail ($500), and successfully quashed the indictment. Again, counsel's effectiveness in quashing the indictment tends to support thenotion that the early appearance of counsel will strongly influence a favorable disposition.

In representing non-migrants counsel tended to spend proportionately more time than counsel representing migrants, though, again, the information from which to draw a conclusion is inadequate. In all but one case counsel appeared early - between the filing of the information and arraignment. The estimated length of time he tood in the two cases is 95.4 days compared to the 113.4 days the cases required for disposition. All but one case was either reduced from a more serious charge or was dismissed. The remaining case was the unusual instance of a defendant charged with committing public intoxication and retaining counsel. It would appear that the longer the case took, the more favorable the disposition. Though only two cases of the eight, for which some information exists, were dismissed outright, reductions in the charges were obtained in five of the other cases. Two cases involved charges of possession of narcotics (felony), another was reduced from burglary third (felony), a fourth was reduced from larceny third (felony), and the last was reduced from resisting arrest (misdemeanor). As stated, the public intoxication charge was not reduced (it could not be), and it resulted in a conviction. From this sketchy information, then, the most that can be said is that the longer disposition times proved beneficial to the defendants.

A final statistic sheds some light on this subject of time spent by counsel. The length of time that counsel takes, which on behalf of migrants was a mean of 7.5 days and on behalf of non-migrants was 95.5 days, may not be particularly revealing. For example, counsel, who by his own account and by the dockets, spent 254 days representing the client assigned him, charged the county for 6 hours and 5 minutes of in-and-out-of-court work. Thus, the 254 days represents only 6 hours of actual preparation and trial work. The defendant, who was released on bail, could, on the other hand, have spent 260 days in pre-trial custody while his attorney was active for only 6 hours and 5 minutes working to help him. Hopefully, such discrepancy between the amount of counsel's activity and the length of a defendant's pre-trial custody does not occur, but the possibility cannot be dismissed, particularly in felonies for which bail cannot be posted. If so, it would be inexcusable behavior on the part of counsel. It may have occurred in Orleans County, where the defendants averaged 85 days, but counsel spent only an average of 36 days, possibly less than five hours of actual work. The reader can recall defendants in the dockets of the counties studied. From the earlier descriptions of migrants it is obvious that some form of representation is vital. Many migrant defendants in these counties appeared to go into court as "losers." The image must have been reinforced by the treatment accorded them. This circumstance cannot and should not be ignored.

Time Spent by Counsel in the Orleans County Courts[1]

Still another factor to consider is the amount of time counsel were involved in representing their clients. In the 2 cases involving migrants charged with misdemeanors, counsel spent a mean of 59.5 days. But both cases were returned to the justice courts after grand juries refused to indict the defendants. In felonies, counsel spent a median of 44 days, but the cases actually took 85 days from first appearance in the justice court through grand jury action to final disposition. That is, the defender spent less than half the time the cases took. This means that he entered the case at a late stage, generally not until the court assigned him at trial. In 1 case the defender was present only for sentencing of the defendant. By comparison, the other lawyer who often acted as assigned counsel spent 138 days representing his defendant.

In representing non-migrant defendants counsel spent a median of 18 days per case, which was virtually identical to the median length of time a case took from first appearance to final disposition. In the only felony case involving a non-migrant, the disposition time was 55 days, while counsel spent 5 days. This is not a useful statistic since it reflects the only case for which dockets were complete. The more complete records on misdemeanor cases indicate that counsel appeared at a very critical stage, soon after arrest. This was not so with migrant defendants. Generally the defendants' cases were at the trial stage before counsel appeared. This is much too late for counsel to be fully effective. Assignment of counsel for migrant defendants must occur closer to arrest than was evident in Orleans County.

Time Spent by Counsel in the Steuben County Courts

Information on the length of time spent by counsel defending migrants and non-migrants in the justice courts is too sketchy to draw any conclusions. Data exist for only 3 of the 6 cases in which counsel appeared on behalf of migrant defendants. According to the dockets the mean number of days that assigned counsel spent in 2 misdemeanor cases was 7.5 days (1 day and 14 days). The cases actually took 1 day and 30 days from first appearance to final disposition, a mean of 15.5 days. This suggests that counsel were involved in the cases for less than half the time the cases took for disposition, but according to the administrator of the assigned counsel program, counsel claimed 27 days (5 hours of in-and-out-of court work) on his voucher. (See Chapter III, p. 55, supra.) and the other drew a six month jail sentence. Both were reduced from the original charge; however, what tends to render this meaningless is the fact that the same defendant and counsel were involved in both cases, which occurred in the same month. The dismissal came in the later case and may have reflected the six month jail sentence already imposed, as well as the fact that counsel appeared right after arrest. Also, counsel spent more time in the earlier case.

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[1] The term "spent" means the length of time counsel were involved in representing defendants from assignment to conclusion of their responsibilities--usually final disposition.

The other case in which a migrant was represented was the case in which counsel was originally assigned and subsequently--and atypically--was retained. Counsel appears to have entered the case very early (between first appearance and preliminary hearing), secured bail ($500), and successfully quashed the indictment. Again, counsel's effectiveness in quashing the indictment tends to support thenotion that the early appearance of counsel will strongly influence a favorable disposition.

In representing non-migrants counsel tended to spend proportionately more time than counsel representing migrants, though, again, the information from which to draw a conclusion is inadequate. In all but one case counsel appeared early - between the filing of the information and arraignment. The estimated length of time he tood in the two cases is 95.4 days compared to the 113.4 days the cases required for disposition. All but one case was either reduced from a more serious charge or was dismissed. The remaining case was the unusual instance of a defendant charged with committing public intoxication and retaining counsel. It would appear that the longer the case took, the more favorable the disposition. Though only two cases of the eight, for which some information exists, were dismissed outright, reductions in the charges were obtained in five of the other cases. Two cases involved charges of possession of narcotics (felony), another was reduced from burglary third (felony), a fourth was reduced from larceny third (felony), and the last was reduced from resisting arrest (misdemeanor). As stated, the public intoxication charge was not reduced (it could not be), and it resulted in a conviction. From this sketchy information, then, the most that can be said is that the longer disposition times proved beneficial to the defendants.

A final statistic sheds some light on this subject of time spent by counsel. The length of time that counsel takes, which on behalf of migrants was a mean of 7.5 days and on behalf of non-migrants was 95.5 days, may not be particularly revealing. For example, counsel, who by his own account and by the dockets, spent 254 days representing the client assigned him, charged the county for 6 hours and 5 minutes of in-and-out-of-court work. Thus, the 254 days represents only 6 hours of actual preparation and trial work. The defendant, who was released on bail, could, on the other hand, have spent 260 days in pre-trial custody while his attorney was active for only 6 hours and 5 minutes working to help him. Hopefully, such discrepancy between the amount of counsel's activity and the length of a defendant's pre-trial custody does not occur, but the possibility cannot be dismissed, particularly in felonies for which bail cannot be posted. If so, it would be inexcusable behavior on the part of counsel. It may have occurred in Orleans County, where the defendants averaged 85 days, but counsel spent only an average of 36 days, possibly less than five hours of actual work. The reader can recall that none of the migrants charged with felonies was released because either the bail could not be met or no bail was granted. These migrants, then, sat in jail for approximately 85 days while the public defender (whose office was in another county) may well have been actively involved in representing them for only 5 hours.

Even if he spent more time, the fact that these defendants sat in jail approximately 3 months awaiting a decision as to their fate must be viewed critically. Pre-trial custody is a form of punishment in itself. When coupled with a jail sentence (which generally did not occur), it becomes a form of double jeopardy. Yet, too little attention is paid to this aspect of criminal procedure until a jail break or the abduction of a judge occurs. Unfortunately, public concern tends to be more punitive than remedial.

The only data from other jurisdictions in any way comparable comes from the Rochester City Court, which also is an inferior court. In that court retained counsel spent 65 days per case and were successful in 65% of the cases, while the public defenders spent an average of 25 days per case and were successful in 61%; all misdemeanors. In Orleans County, using only misdemeanor cases involving migrants the defender spent an average of 59.5 days and was successful in only 50% of his cases. Among non-migrants, and again limiting this to misdemeanors, counsel spent a median of 18 days and were successful in only 33% of the cases. Retained counsel representing non-migrants in Orleans were not so successful, winning only 1 of 7 cases outright while spending considerably less time than retained counsel in Rochester (18 days vs. 65 in Rochester).

In the Steuben County justice courts, where information is available assigned counsel (the alleged counterpart of the public defender) spent 15.5 days and was successful in 1 of 2 migrant cases. In the other case involving a migrant defendant, counsel was retained, spent 73 days and won (quashed the indictment). On behalf of non-migrants counsel spent an estimated 95.4 days and obtained a withdrawal or dismissal in only 2 of 8 cases, 25% success. All but 1 were retained.

In neither county were counsel as successful as their colleagues in the nearby Rochester City Court. It is recognized that many variables exist which tend to negate this comparison, but the researchers are strongly tempted to suggest that the most significant variables are the lay justices who man the courts and the general atmosphere that prevails. The informality, the general discretion that justices exercise, and the strong influence exerted by the arresting officers appear to be determinants of the effectiveness of counsel. An additional factor is the attitude toward migrants, though this may be discounted by the fact that non-migrant defendants are also convicted more often in the justice courts than in a nearby city court.

Other factors that cannot be examined satisfactorily here and which may have a bearing on the disposition times are: justices' predilections for "neat" books (cases completed); counsel's possible dislike for night work in somewhat remote justice courts; the justices' accessibility at different times of day, which is commonly given as a reason for continuing the justice system; the strong desire of migrants to dispose of the cases so they can return to work; and a very elusive one--the relationship between counsel and lay justices.

The question posed by this last factor is: "How does the presence of experienced criminal lawyers before relatively untrained judges affect the outcome of the case?" Will the presence and skill of an experienced lawyer influence the lay justice to the extent of determining the decision? Or, on the other hand, will the presence of a lawyer before a lay justice cause the justice to act defensively? The latter was evident in the comments of one justice who felt that a "big shot" lawyer was trying to intimidate and to impress him. But, the justice believed he "showed the big shot" that he could not be intimidated. Either way, it remains an open question, but it cannot be disregarded in studying the criminal cases in the justice courts. Of course, this factor is minimized or eliminated, depending on individual abilities, if the justice himself is a lawyer and in county courts where all are lawyers.

Concluding Remarks

After this rather lengthy discussion, a brief resume seems necessary. We found that the "typical" migrant in the justice courts was male, 37 years old, black, arrested on charges of having committed minor offenses (public intoxication, assault third, or disorderly conduct) and was convicted almost 90% of the time. He was represented by counsel only around 5% of the time (between 1.5% and 3.8% in misdemeanor and violations cases) and then had between a 25% and 50% likelihood of having the charges withdrawn or dismissed. Generally, he was either released from custody pending trial or tried at his first appearance. He was bailed less than 20% of the time. If convicted, and he was almost certain to be, he could expect either a jail sentence or a fine. If jailed, he could expect to serve between 12 and 15 days. If fined, he paid between $18.75 and $25.00. His case did not take long, a median of 1 day. If he had counsel, the case took a little longer varying from 7 to 40 days more.

His counterpart, the non-migrant defendant, was also male, but he was white and about 13 years younger. He was less often charged with violations (public intoxication, and disorderly conduct) and more often charged with misdemeanors (petit larceny, trespass, criminal mischief, and issuing bad checks). He was about 14% less likely to be convicted than migrant, except in felonies, though the data were so small as to be unreliable for drawing conclusions. The non-migrant was more likely to have been represented (almost twice as often as migrant), but somewhat more likely to have been convicted if represented (64% vs. 50% in Orleans and 77% vs. 75% in Steuben). The non-migrant was less likely to have been released upon his recognizance, but more likely to have been bailed. If convicted, he was much less likely to have served a jail sentence (between 6% and 15% of the time), but he was almost sure to have been fined (almost half of the cases), or discharged. If jailed, he served approximately the same length of time as the migrant, and if fined he paid about the same amount as the migrant. (He paid less in Orleans and more in Steuben). His case also took about 1 day for disposition. If he had counsel, and he was twice as likely to have had, his case took less time for disposition than for migrants in Orleans and more time than for migrants in Steuben. All in all the non-migrant went into court with an advantage and tended to come out the same way.

CHAPTER VI

THE MIGRANTS IN THE COURTS: CONCLUSIONS AND RECOMMENDATIONS

There is a story about a baseball player in the days before player unions and famous-name franchises. The player cracked out a long drive which he followed up with a daring slide into second base. On the next play he made an even more daring slide--back into first base. To his amazed manager the explanation made even less sense than the player's erratic behavior on the base paths. He explained that after looking ahead he concluded that first base was easier to steal than third. Like the ballplayer, the researcher may be tempted to seek an easy way out by drawing conclusions not based on logic or evidence.

The desire to go beyond the evidence arises from the fact that it is difficult to remain objective when studying the treatment of persons who are generally at the mercy of so many controlling factors. For example, weather alone may determine the fate of a migrant. A drought, heavy rains, or a fungus may destroy what appear to be a migrant's raison d'etre. Human factors may also be controlling. The tedium and hopelessness that are experienced by those who work long hours for low pay may lead a migratory farm worker to drink, which may lead to public intoxication. Public intoxication may lead to arrest and to the need for bail and counsel, neither of which he can afford. Conviction and fifteen days in jail stops the migrant from working, paying rent, and buying groceries. And ironically, the person who almost literally feeds a large part of the nation cannot feed himself.

The temptation to draw unwarranted conclusions is present, but giving in to such a temptation may do more harm than good. Dilettantes at times have done a great disservice to migrants by assailing growers, crew chiefs, courts, local government and, indeed, "the system." Such dilettantes, after condemning, pack their tools (barbed tongues, acid pens, and over generalizations) and prepare to slay "dragons" elsewhere. However, the "dragons" are not dead; only wounded. The "dragons" lick their wounds, regroup, and find other ways to perpetuate the "wrongs" that were exposed.

In the long run, it may be that the real good to be done for the migrant is that which can be performed on a sustained basis with reliance on the migrants themselves. Others can offer suggestions and means, both moral and financial. The conclusions and recommendations herein are intended to aid the migratory farm worker over the long haul with the support of those who can and will help.

The objectives of the present study were to identify and to survey the appropriate courts in two counties to determine who the migrant defendant is, what charges are brought against him and what treatment is accorded him in these courts. On the basis of these findings suggestions were to be made which would help the migrant in the future. What follows are conclusions and recommendations stemming from these findings.

Conclusions

Charges

A majority of the charges brought against migrants were so-called minor offenses against the public order (public intoxication and disorderly conduct). In Orleans County 81 of 150 defendants whose cases were found in the dockets were charged with such offenses. Less frequently, but important, were more serious charges of violence, generally assaults. The Steuben County dockets were similar. In the justice courts 59 of 109 migrants were charged with public intoxication and disorderly conduct and 18 of 109 were charged with assaults.

Felony charges were much less common. Only 12 of 150 migrant defendants were charged with felonies in Orleans County in 1968 and 1969. In Steuben County even fewer migrants, 3 of 109, were charged with having committed major criminal offenses.

These data show that migrants were most often charged with offenses not commonly regarded as "criminal." Coupling this information with other studies of migrants, it appears that these offenses are a product of what has been labelled the migrant's life style. Excessive drinking, the most common offense, stems from the tedium of the work, from the conditions of traveling and living in unfamiliar surroundings, from having different values, and from the inevitable, close, social interaction with others. That is, the offenses with which migrants were charged tend to stem from conditions that migrants cannot control directly and which may be regarded by them as unalterable. Paradoxically, escape that is sought by drinking may cause an unwanted contact with the law which can only confirm a feeling of inadequacy and hopelessness. In any case, the types of offenses with which the migratory farm workers were charged were most likely to result in convictions. The Orleans County justice court dockets revealed that for all migrant defendants the conviction rate in 1968 and 1969 was 87.6%. In the typical violations cases (public intoxication and disorderly conduct) migrant defendants were convicted almost every time, 96.6%. The Steuben County dockets indicated an even higher rate of conviction for all migrant defendants, 93.1%, with a 98.4% rate for violations.

Migrant defendants were more likely to have charges dismissed if charged with felonies. Less than half of them were convicted. Two reasons were given: 1) the unlikelihood of witnesses corroborating the charges in court, and 2) the likelihood of representation by counsel.

Counsel

As noted, the migrant defendant, if represented, was more likely to have the charges against him dismissed or withdrawn. Unfortunately, the migrant defendant was generally uncounselled. Counsel is practically guaranteed in the county courts, but in the justice courts he was almost certain not to be represented by counsel, unless the charge was reduced and returned by the county court. In the Orleans County justice courts counsel represented only 2 migrant defendants, or 1.5%, of all migrant defendants charged with minor offenses. Overall, including felonies, only 10 of 150 migrants had counsel, and 8 of those were originally charged with felonies. In Steuben County only 6 of 109 migrant defendants were represented by counsel. Surprisingly 4 of the 6 were charged with minor offenses.

The importance of counsel has been explained. The most obvious consequence of lack of counsel is conviction. In the Orleans County dockets almost 88% of the migrants were convicted, and 90 of 128 were jailed or fined (a median of $25). Another 29 defendants forfeited bail. Thus, 92% of the migrant defendants in Orleans County suffered loss of pay or a fine which had to be paid from already low wages.

In Steuben County approximately 93% of the migrant defendants were convicted, but they fared somewhat better than migrants in Orleans County. Over half, 54 of 94 defendants convicted were jailed or fined, more likely the latter. And their fine was almost a third less than that paid by migrants in Orleans County. Thus, though more likely to be convicted, migrant defendants in Steuben County were less likely to serve a jail sentence, pay a fine, or forfeit bail.

Even when represented by counsel, migrant defendants did not fare as well as might be desired. In Orleans County counsel, all assigned, gained dismissals or withdrawals in 5 of 10 cases (a misdemeanor and 4 felonies). The record appears even better if plea bargaining is used as the standard. Counsel obtained reductions of the charged in 90% of the cases. However, the dispositions reflect the original not the reduced charges.

Somewhat surprisingly, by the stricter standard of withdrawals/dismissals, counsel for non-migrants were less successful than counsel for migrants, obtaining withdrawals/dismissals in 5 of 14 cases. They were less successful in plea bargaining, as well. In 9 of 14 cases the charges were reduced.

Thus, counsel for migrants in Orleans County, principally the public defender, appears to have been more successful than counsel for non-migrants by both standards of effectiveness. However, neither type of counsel was found to have been as effective as the public defender or retained counsel in another court with which a comparison can be drawn. The Rochester City Court, however, did not have any migrant defendants as far as can be determined. A question might be raised about the effectiveness of counsel, but lack of data precludes any answer to the question.

In Steuben County counsel, all assigned and representing migrants charged with minor offenses, obtained dismissals in only 1 of 4 cases, but all charges were reduced. That is, by the stricter standard of dismissals, counsel were successful in only 25% of the cases (compared with 50% in Orleans), but were 100% successful in plea negotiation, which is a somewhat better record than counsel achieved in Orleans County.

In the two cases in which migrants were charged with felonies, counsel in Steuben County were as, or more, successful than counsel in Orleans by both standards. Both charges were reduced, and counsel managed to quash an indictment in 1 of the 2 felony cases. It could be argued the reason was that counsel was retained. Assigned counsel appear to be less effective.

By comparison, counsel representing non-migrants in these same courts were less successful than counsel for migrants, winning only 2 or 9 cases outright and obtaining reductions in 7 of 9.

Another factor to consider is the stage of the case in which the migrant was represented by counsel. In Orleans County counsel generally did not appear on behalf of the migrant until the actual trial of the case. Thus, the critical stages--arrest, first appearance, and preliminary hearing--had already occurred. Confessions or guilty pleas (which are tantamount to conviction) were virtually assured by that time. In Steuben County, while the information available almost rules out comparisons, similarly it appears that counsel were not actually involved in representing their clients until later stages of the cases.

Release Procedures

An index of the treatment of migrants, and which can be of critical importance, is whether and how they are released pending trial. On the surface at least migrant defendants appear to have been treated well in the Orleans County courts. Almost half the migrants charged with misdemeanors and violations were released on the promise to return at the appointed time. They were thus allowed to work pending trial and did not have to try to post bail. This arrangement not only tends to work to the advantage of the migrants, but it may also serve the interests of the county since no commitment at the expense of the county is required. A possible disadvantage is that release is predicated on the promise of the crew chief or grower to guarantee the migrant's return. This might be interpreted by the migrant as suggesting he cannot be trusted, but it also places pressure on the guarantor, which may prove undesirable.

On the other hand, no migrants charged with felonies were released. Either bail could not be met or no bail was granted. Whether this reflects the gravity of the charge or a belief in the violent nature of migrants cannot be determined.

In the Steuben County courts migrant defendants were seldom committed to pre-trial custody. They were not ROR'd as often as in Orleans County (49.6% vs. 28.5%) and were almost never required to post bail. However, they were generally tried at first appearance, which suggests a dual concern of justices: a desire for dispatch of cases and avoidance of the expense and burden of committing migrants in minor cases. Non-migrant defendants in these same courts were more likely to be ROR'd or bailed. Again, as in Orleans County, migrant defendants charged with felonies were not released.

Rights of the Accused

Another factor to consider, which has only been alluded to thus far, is the general ignorance of migrants concerning their rights in court. Very few requested counsel. An undetermined number of migrants equated arrest with guilt.[1] The fact that they were arrested seemed to suggest to migrants that they necessarily had done something wrong, and this was compounded by a belief that their first appearance was the trial itself. Guilty pleas were quite common. The incidence of bail forfeiture in Orleans County (almost 20% of the migrant defendants forfeited bail by failing to return on the appointed court night) supports the idea that migrants regarded first appearance as constituting the trial.

The general ignorance of rights was evident in the number of times migrants would not testify in criminal cases. In part this appears to be due to a desire to avoid contact with authorities, and in part it may result from a fear of appearing in court and somehow becoming defendants rather than witnesses. It can be argued that still another reason for not appearing as witnesses, as well as for pleading guilty, is the generally poor self-concept the migrant has. A person who feels unimportant, unworthy of attention, or fearful may feel helpless in court. The most obvious example is the young Puerto Rican who had given up on himself and pleaded guilty to a charge of escape. He pleaded despite the confidence the defender is claimed to have had in the likelihood of obtaining a dismissal of the charge.

A factor which might qualify these conclusions is the age of the migrant defendants in the courts. The median age in both counties was 37 years. Thus, the defendants whose cases were studied, may have been in the migrant stream for twenty to twenty-five years. Their feelings and actions were probably based on years of uprootedness, which may not yet characterize the younger migrants. It is entirely possible that the younger migrant, better educated and more aware of the world around him, may not be so pliable or fatalistic when confronted by law enforcement officials. He may have a better self concept and may be better informed of his rights upon arrest. Certainly he is different from the migrant defendant profiled here, at least in terms of age. Our "typical" defendant has, on the average, only twelve years to live.[1] It may be that he considers his life behind him though the young Puerto Rican's case suggests that the younger migrant may share this belief. Thus, a replicative study sometime might prove useful to prove or deny this possibility.

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[1] This belief is not peculiar to migrants. A recent example brought to the attention of the researchers involved the selection of a jury in a justice court. One potential juror believed that the defendant "must have done something wrong or he wouldn't have been arrested." Two events, one quite recent, contradict this notion. In Santa Barbara, California, the scene of some violent clashes between police and college-age persons, a young assistant district attorney was arrested and committed to jail overnight for a curfew violation while standing in his own yard talking to a neighbor. An earlier illustration involved a federal district court judge in Chicago, who, while walking his dog late one evening was arrested on suspicion of having committed a crime. With obvious embarrassment the authorities released him hurriedly the next morning when a lost person report was received.

The Justice Courts

"Hard data," derived from dockets and analysis thereof, are rather uninformative about some of the larger issues arising from this study of the justice courts. The types of charges, dispositions, release procedures, extent and effectiveness of counsel, and similar information describe the plight and handling of the migrant defendant in the courts, but only indirectly provide insights into the actual workings of the justice court system. Certainly the monotonous and ritualistic reading of the rights to the accused, the preponderance of guilty pleas, the tendency to impose maximum jail sentences, and the tendency to fine "what the traffic will bear" are indicative of the treatment of migrant defendants. But even these indices do not tell the whole story.

One issue is the existence and degree of prejudice that may work against migrants. Most justices were not openly prejudiced. It was the rare justice who actually stated that even his dog dislikes migrants or that the best thing that could be done is to "get them out of the county." More commonly the justices employed euphemisms to describe their attitudes toward migrants. The euphemisms appeared deprecatory or condescending. They suggested a concern that would appropriate for a child or an incompetent adult.

Another common attitude toward migrants was the expressed concern over the possibility that a migrant might stay after the season and might become a welfare recipient. This concern extended not only to the release procedures (ROR or trial rather than pre-trial commitment), fines (imposing those that could reasonably be paid), and conditional discharges ("get out of the state by..."), but also to the passage and enforcement of zoning laws. More than anything, the attitude of the justices, as well as the law enforcement officials, was summed up by the conviction that migrants were "different."

The existence of these attitudes affects the treatment of migrants in the courts. The "compassionate" justice who tries to overcome his prejudice may do as much harm as the avowed bigot. As with the athletic official who fears the appellation "homer" and "leans over backwards" to be fair, the justice who tries to temper his prejudice may commit even more wrongs in the name of fairness. He cannot be faulted for the attempt, but the prejudice can surface in times of stress or indecision.

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[1] "Migrant--An NBC White Paper," July 16, 1970, in which commentator Chet Huntley stated that the average life expectancy of the migratory farm worker is 49 years.

Possibly the most important factor that is a measure of the justice court system--that which could most easily be remedied--is the relative lack of training most justices have. They are required only to have an approved "course of training and education," which varies. It is the general lack of legal background of the justices combined with the differential training and commitment of licensed practitioners that can create serious problems for migrant and non-migrant defendants alike. While experienced higher court judges will at times be guilty of misreading the governing law, the lay justice is far more prone to do so. Examples were a justice's misreading of the law regarding appeals and a justice's belief that counsel is not required for defendants charged with violations. The latter can result in more harm, but neither is justifiable in a recognized court of law. Few defendants are experienced enough to defend themselves adequately in any court of law, and there is also the old saw that the person who defends himself has a fool for a client. The misreading of the law with regard to the right to counsel can have serious consequences.

It is not at all unlikely that the lay justice who lacks professional training will exercise Solomon-like judgment, but to rely on the possibility is unwarranted. More commonly, the lack of experience is due to the fact that justices serve only on a part-time basis. The used car salesman, the gas station-grocery store owner, the abattoir owner, or the photographic company employee simply cannot spend the time required to be proficient. In addition the informality of many of the courtrooms encountered can be criticized. The lack of dignity and decorum, the informality of the proceedings notwithstanding the required reading of the docket advisement form, and the almost confessional atmosphere that will occur can be unduly disturbing to the defendant. Remedies are almost suggested by the statement of the problem.

Recommendations

Making recommendations can be more difficult than drawing conclusions, but not any the less vital. The problem is clear: recommendations must be based on available evidence and must be viable. Also the recommendations must consider real, live, breathing persons, not simply numbers. A serious attempt is here made to suggest possible solutions that will benefit migrants immediately as well as in the future.

Charges

One way to reduce the number of criminal charges brought against the migrants is obvious: decrease the number of migrants. While this appears to be throwing the baby out with the bath water, the fact is that there has been a decrease in the number of migrants, and necessarily a decrease in the charges brought in recent years. Moreover, the continuation of this pattern can be anticipated. Greater mechanization, stricter laws dealing with migrant housing, additional programs for increasing job skills, and fewer persons willing to follow their parents' footsteps will undoubtedly decrease the number of migrants traveling into these two counties.

More immediate action can be taken to reduce the causes of migrant crimes. Recall that the criminal offenses with which migrants were most often charged were minor offenses, which seem to be related to the migrants' life styles. The cynical statement that "booze, women, gambling" are the roots of all migrant crime bears repeating because of its apparent validity. The lack of employment, housing, and leisure time activities must be remedied.

A significant step to alter conditions of employment have been taken by other migratory farm workers, such as western grape pickers. Organization will help to remedy some of the conditions, to improve contractual relations, pay, and to ameliorate working conditions. Also organization may lead to the creation of cooperative stores in which food, clothing, and liquor can be sold under controls set by the migrant themselves. Simply reducing the costs of these items, as well as eliminating the typically illicit nature of the procurement of alcoholic beverages may help. Cutting out some of the middleman's profits will help to conserve more of the migrant's earnings. Such collective efforts are difficult for migrants who travel constantly in small, unrelated groups, but more settled residents have already taken some of these steps.

More directly related to the data is the suggestion that many arrests might be unnecessary. Not all arrests for public intoxication any more than all arrests for trespass and vagrancy are necessary. Generally little harm results directly from drinking. Only occasionally do assaults accompany drinking. Rather the cause of public intoxication arrests is that drunkenness offends public sensibilities. In fact, public intoxication is more likely a symptom than a crime. Encouraging a migrant to return to camp or licensing bars within camps might eliminate a large percentage of public intoxication arrests.

Assault arrests probably cannot be so easily dismissed. Harm is usually done to the person, typically another migrant. Police protection or action is mandatory. Whether assaults could be diminished by lessening the hostilities of migrants that are only infrequently released and directed outward cannot be determined. Efforts could be made by those who could alter the migrant's living conditions. The elimination of the barracks-like housing and atmosphere might reduce the number of assaults. More comfortable, less sterile-appearing housing and more opportunity to relax in a degree of comfort might also affect the incidence of assaults. It is naive to believe that changing housing is enough, however.

Counsel

The data strongly support a belief that much can be done to assist migrants in the courts. Indeed, the statutory requirements suggest that lack of counsel should not be a problem, especially in Orleans County which has supported both a public defender and an assigned counsel system. Similarly, in Steuben County the existence of the assigned counsel system should mean adequate representation. In fact, in both counties counsel is assigned regularly in the county courts, though sometimes late in the trials.

The lack of counsel in the justice courts is egregious especially in the most critical stage of a case between arrest and first appearance. The United States Supreme Court has shown particular concern over the need for counsel at this stage.[1] Despite the fact that defendants are generally advised of their rights, most defendants remain ignorant of criminal procedure. Migrants seem to suffer from this ignorance more than does the general population. Few ask for counsel, and those that do, rarely are represented. The right to counsel under these circumstances is meaningless.

One remedy might be the use of legal interns to man the justice courts, as medical interns serve the emergency rooms of many hospitals. These legal interns could be third year law students performing a year, semester, or quarter of study and practice. Unlicensed they could not practice law in the sense of conducting trials, though it appears that some legal aid agencies have permitted this, but they could advise a defendant and could obtain adjournments and the defendant's release. Working out of the defenders' offices, or legal aid bureaus, such legal interns could be "on call" to appear on behalf of defendants in justice courts. They would be available in all types of cases, including the indictable cases that originate in the justice courts to assure earliest possible representation. Legal interns serving year round and offering considerable help to the "resettled migrants" who retain many of the migrant characteristics, would certainly be present during the harvest season.

Even if the legal interns only worked summers, they would be available for the greater part of the harvest season. Most migrants do not arrive in Orleans and Steuben counties until late July, and the peak period is around September 5, which is earlier than most law schools start the academic year. Law schools could institute courses which would encourage students to represent migrants and other indigents in the justice courts. The public defenders will not likely resent the interns, because they are sometimes burdened by the case load. Nor is it likely that retained counsel will fear the loss of business, especially when the potential clients cannot pay the required retainer.

A potential problem with the use of interns is the relative absence of law schools nearby. However, the State University of Buffalo Law School is not far from Orleans County. Syracuse University Law School is less than 100 miles from Steuben County, and Cornell University Law School is even closer. Again, using the analogy to medical interns, these legal interns could work only week ends for some kind of pay or credit. Interns could drive to one of these counties on a Friday afternoon and stay through Sunday night once or twice a month, sleeping in some accommodations which would allow them to serve the required geographic area. In Orleans and Steuben Counties, if centrally located with relation to migrant camps, none would have to drive over twenty-five miles to any justice court in which migrants are likely to appear.

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[1] Escobedo v. Illinois, 378 U.S. 478 (1964); and Miranda v. Arizona, 384 U.S. 436 (1966).

At the very least, the existing services could be made effective. Sufficient resources already exist to allow for more extensive legal services to indigents, which would include most, if not all, migrants. Prodding by concerned citizens would assure more attention to meeting the statutory requirements for counsel, which in New York State are quite adequate. One simple step would be to require the public defender in Orleans County to locate his office more conveniently to migrants and other indigents.

Release Procedures

From the available evidence release procedures, which are extremely important to any defendant and vitally affect migrants, tend to be favorable to migrants. That is, migrant defendants commonly gained their releases or were tried without delay. The problem with the latter has been discussed, and the difficulty posed by the manner in which releases are granted is that it places pressure on the chief or grower, who, in turn, may have to exert pressure on the migrants.

An appealing remedy is suggested by the publicized and successful Vera Institute bail bond system. Over 100 cities have copied it to some degree. Essentially, the plan calls for a staff which screens defendants and recommends certain ones for release on their promise to return. The advantages are many: most defendants return (on the average less than 4% fail to return and many cities, such as Los Angeles, had a "no show" record of only 2.9%, including felonies and misdemeanors);[1] families may not become dependent on the granting of welfare benefits; counties do not have to spend money on commitment; defendants have a better attitude toward the police; and bail bondsmen, who have been described as usurious, are rendered unnecessary. Orleans and Steuben Counties could employ such a release program, using legal interns, VISTA Volunteers, OEO or community action agency workers to attend courts and investigate defendants for release.

Bail reform would work to the advantage of the courts and the growers as well as to the migrants. The courts could be relieved of some of the burden of deciding on bail or release, a grower could have greater assurance that his workers were free to work pending trial, and best of all, the migrants could be freed of the necessity of posting bail, being released to a crew chief, or being tried the same night as first appearance. The costs of such a program would depend upon the total population to be served. It is doubtful that the expense would be prohibitive.

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[1] The interested reader could refer to other sources for more details: Howard James, Crisis in the Courts (New York: David McKay Co., Inc., 1967), pp. 119-124; Task Force Report: The Courts, pp. 38, 39, 41.

Advisement of Rights

A significant step requiring only a minimum of effort would be a program to assure that migrants are informed of their criminal rights. Sessions with migrants in camps could be held soon after their seasonal arrival. These sessions might be conducted by lawyers from the county bar associations, by public defenders, by legal aid attorneys, or by interested private practitioners who serve as assigned counsel. Further, responsible and respected migrant project leaders, growers, or crew chiefs might be able to follow up these sessions, if they did not conduct them. Even a simplified bi-lingual booklet might be prepared, disseminated, and read to and with migrants.

These sessions, which should include interested "resettled migrants" who face similar situations and risk similar consequences, need not be technical. Nor should they be demeaning to the migrants, in the sense of telling them how the system operates and how they should act to stay out of trouble. Instead, some of the court process should be explained, particularly the significance of the arrest and first appearance. Points that should be stressed are that first appearance is not a trial, arrest is not tantamount to guilt, and that bail is to ensure return and is not a fine.

Most important is the need to explain the significance of the right to counsel. The defendant's request is all that is necessary. Counsel determines indigency, and the standards in both counties seem to be fair. The migrant defendant, the "resettled migrant," the poor resident, and, in fact, every defendant is guaranteed the right to have the assistance of counsel in criminal cases. If he cannot retain his own counsel, he may request the assistance of public counsel in all criminal cases except those traffic violations which do not carry a possible jail sentence. Also this right extends to appeals. The assistance of counsel, however minor a case may appear to a justice or arresting officer, is important. Such assistance is intended to assure at least minimal concern for the rights of the accused. Unfortunately, as seen earlier, it does not guarantee justice. That matter must be attended to, as well.

The Justice Courts

A relatively obvious first step in reforming the justice courts is replacement by district courts.[1] This could be done under the provisions of the 1962 Court Reorganization Amendment and the Uniform District Court Act. A main "part" would be centrally located and other "parts" located throughout the counties. Jurisdiction could be split into 1) civil, criminal, traffic, youth, arraignment (including week end and holiday), and 2) criminal non-jury "parts," as is done in Nassau and in many city courts. Matters to be handled with a degree of dispatch--arraignment, small claims, and civil non-jury--would be the responsibility of the "parts" of the court located throughout the counties. At least one court would be open 365 days a year for arraignment to prevent delays between arrest and first appearance.

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[1] The source for this discussion is The Judiciary, pp. 267-292.

An important consideration is the fact that these courts must be manned by lawyers who may not hold any other public office or practice law, limitations not imposed on justice court judges. It is possible, if the need were demonstrated and personnel existed, to have non-lawyers screening and disposing of minor cases such as traffic, which do not carry a possible jail sentence to relieve the judges of a heavy responsibility.

No special legislation is required by authorities above the county, town, or village level. So this reform would be relatively easy to accomplish, barring the inevitable political maneuvering likely to occur. Town and village officials can be expected to be reluctant to eliminate the present justice courts, which are considered accessible to all and a significant part of the democratic process. A serious drawback is the probable increase in town and village budgets to finance the district courts, but a compensatory feature might be that the number of judges required could be half the present number.

One positive feature of the district court would be the elimination of the generally undignified town courts. The present courts located in farm houses, behind gas station-grocery stores, next to road graders in fly-infested rooms, and on small, out-of-the-way, gravel roads would be replaced by courts more like those in some villages, such as the remodeled Wayland Village and Town Court and the Albion Village Court.

If the district court is not acceptable, the least that could be done to reform the justice courts is to increase the required legal training of the justices presently sitting and sitting in the future. Annual training might serve the purpose. A rotating system, whereby one justice is available twenty-four hours a day every day, or at a minimum from Friday afternoon through Monday morning, could be initiated. Possibly fewer justices could serve on a full-time basis in the existing courts, based on their recognized abilities, amount of training, and successful grades on a written test or on a series of simulated court cases.

The problem of prejudice in the justice courts is not so easily solved. There may be no real answer but time in which to erase some prejudices. The decline in the number of migrants may help, and the greater respectability that "resettled migrants" enjoy may encourage greater tolerance. This is hardly satisfactory to those who will be defendants in the justice courts in the more immediate future. Possibly community action programs, organizations of migrants and "resettled migrants" and legal service agencies can apply sufficient pressure to encourage change. But it will take a concentrated effort on a sustained basis and will call for proper use of the powers granted to the Administrative Board of the Judicial Conference of New York State. It is "responsible for setting standards and administrative policies for the courts throughout the state."[1]

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[1] The Judiciary, pp. 77-84.

The underlying problem, the attitudes the migrants themselves convey which in part determine the attitudes of the justices in the courts, may remain. The weak self-concept, the unfamiliarity with court procedure, and the seeming inability to adapt easily to the culture of the larger society all militate against the migrant defendant. To blame the justices for their lack of comprehension of the relativity of subcultures is probably unfair. Moreover, it may be self-defeating. Branding justices as bigots, which was not the case here, could prove more harmful than acknowledging the "good" qualities that justices demonstrate: conscientiousness, accessibility, friendliness, and a concern for their towns and villages. These qualities can be capitalized on if they are identified, for they can lead to increased fairness and even-handedness in the handling of criminal cases.

It is important to ensure competent justices, and it can be argued that the justice who does not feel threatened, who has a strong self-concept, will more likely be tolerant and fair. The other side of the coin is the self-concept of the migrant. The migrant with a healthy self-concept may approach the court in a more positive manner. Between them the opportunity for justice should be enhanced.

Other Recommendations

While the objectives of the study did not strictly encompass an examination of factors other than those directly related to the courts, we would be remiss if other observations and suggestions were not made. An important point to note is the relatively small number of migrants who become defendants in the justice courts. Only 4.8% of all the migrants reported to be in Orleans County (and only 3.1% in Steuben County) in 1968 and 1969 were brought into court on criminal charges. However, because no attempt was made to examine the Vehicle and Traffic dockets, it may be that many more migrants were actually charged with statutory crimes. This was stressed by some justices who hefted some full docket books. This aspect of the criminal law could be examined by others interested in the subject, and it might prove significant.

Another consideration is the situation of "resettled migrants" against whom a relatively large number of charges were brought. Those who have left the migrant stream or who were attracted to the processing plants (Birds Eye, Duffy-Mott, Hunt-Wesson, or Heinz) and have remained tend to experience problems indistinguishable from those migrants experience. In Orleans County, from the best reckoning that can be obtained, almost thirty per cent of the non-migrant cases involved these former migrants. Moreover, these defendants tend to be over ten years younger than the migrant defendants, suggesting they may be the children of former migrants. One defendant was so identified by a justice.

It can be suggested that the occurrence of criminal charges against these former migrants and their children represents their inability to adapt to the subculture to which they have been attracted. One resident who bears only a few similarities to former migrants vividly described the problem of trying to adapt. Among other things it requires the loss of one's ethnicity, and this may not be done successfully or without a price. Her young, dark-skinned child was the object of prejudicial treatment by white youths on a playground, a poignant reminder that she was Puerto Rican and would always be. The relative absence of bitterness with which she told the story suggests her ability to adapt, but the question she has is whether the price is too great.

A "resettled migrant" who was interviewed remained so reticent that the researchers became equally uncomfortable. It seemed that she did not know how she was to respond to questions put to her. Her guardedness and suspicion were perhaps representative of those who have left the migrant stream, but who have retained some, if not most, of the characteristics attributed to migrants.

Generally these former migrants remain poor, unskilled, and uneducated. An example is the man who lost his fingers and toes. He must be considered a migrant though he has lived in Orleans County for over five years. Another is the "town bum," considered capable of cleaning latrines only. Another is the Puerto Rican who threatens and blackmails others, as he might have done as a crew chief earlier. He apparently has nothing else going for him now. Still another, a woman, is reduced to the status of the town drunk at the relatively young age of thirty-four. These persons should not be ignored, and are not, by the police to whom they pose problems. One former migrant represents a fifth of the cases recorded in one village, and his female counterpart had a virtually identical record in a Steuben County town.

Former migrants who are not reflected in the criminal statistics may live little better. One who has lived in Orleans County since 1955, when he became employed by the Penn-Central Railroad, still lives within a short distance of a migrant camp near others like him. He cannot write his name. These former migrants are tolerated by the residents so long as they do not try to live on welfare and do acquire some proprietary interest in their adopted homes. But the housing they occupy often is no better than the bad camps in which they might have lived. Their quarters lack inside plumbing and are small and dirty. Occasionally local zoning laws permitting, former migrants will live in trailers (they really cannot be called "mobile homes") only a little better than shacks.

Migrants and former migrants share many disadvantages. They lack skills to earn satisfactory wages, which results in poor housing, inadequate health care, and inability to retain counsel when charged with committing criminal offenses. But little attention has been paid to these persons who can be labelled the "rural poor." They live in unlicensed and abandoned camps and shacks which allow for fair comparison with the urban ghetto dweller. And their number may be increasing as opportunities for migrants decrease. They may remain in the familiar surroundings of the fertile fields they worked as migrants, or they may migrate once more to the cities.

A study of indigent defendants in the Rochester City Court suggests an increasing number of former migrants are becoming city dwellers, without the skills to live comfortably in affluent Monroe County.[1] In that study it was stated that the chronic police case inebriate is characterized as "without personal financial resources, unskilled, undereducated, middle-aged, and undersocialized...a drifter unwelcome in this affluent county... Not surprisingly a disproportionate number of public intoxicants are young Negroes who came into this county to harvest crops and drifted into the city." This conclusion seems equally applicable to the former migrants whose cases were discovered in the dockets of Orleans and Steuben Counties.

A problem frequently mentioned is the lack of adequate housing for migrants and former migrants. Too often there are no facilities or those available are almost uninhabititable. Some "model" camps were identified. The local health boards and state agencies have made a real effort to improve conditions. Unfortunately and ironically, the establishment of standards and the enforcement of these standards has discouraged some growers from operating licensed camps. The result tends to be unlicensed camps, for which no one seems to want to take responsibility.

One such unlicensed camp was condemned earlier in this study largely because of the double standard by which the owner lives. Another unlicensed "camp" was pointed out to the researchers by a justice who claimed he was powerless to change the situation. He was irritated, but for the wrong reason, it seems. He was incensed over the fact that the owner of the camp--an old farm house without screens, without inside plumbing, unpainted and generally unfit for occupancy--was making more profit from its operation than the justice did from a room he rented in his house. Still another example of housing, the "new" camp, located in "remodelled" offices has already been cited. Finally, there is the camp near Medina which has been abandoned by Birds Eye Foods but which continued to be "home" for some former migrants.

The reason such housing exists seems generally to be posed as a question: if the housing is closed, then where will they go? The argument is specious. They could go to better, low-income housing--if it were available. The "remodelled" offices could be further remodelled to be more in line with humane standards. Rents might have to be raised but they need not be beyond the ability of migrants and former migrants to pay. Certainly Albion with its abandoned store fronts and "For Rent" signs suggests that prices for housing could be lowered. Money seems to be available for urban renewal, for senior citizens' housing, and for meeting a variety of other community needs. Money may have to be directed toward housing for the rural poor, as well.

Another problem that has not been adequately assessed involves the employment of the migrants in general and their relationships to crew chiefs in particular. Typically, migratory farm workers are unorganized, poorly paid, dependent upon rather casually determined work contracts, and subject to conditions of work imposed by crew chiefs or growers. The migrant-crew chief relationship especially has been examined only briefly thus far. Three examples of problems were cited: the crew chief who ran the migrant off the road and fired shots into his car, the crew chief who was found murdered on Route 15 supposedly because of his maltreatment of his crew (and undoubtedly the reported $1200 in his pocket), and the former chief who kept order by means of a pistol in an abandoned camp near Medina.

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[1] Mahood, "Defending the Poor...," p. 36.

The basic problem is to suggest alternatives to the recruitment and employment of migrants by crew chiefs which would also benefit former migrants. Two serious obstacles that most migrants face are the lack of organization and the lack of coverage under the National Labor Relations Act. The grape workers in California have gone far to solve the problem of organization and may well solve the problem of federal statutory protection. These solutions may not be applicable to other, even more migratory farm workers, because of their mobility, diversity, and ethnic differences. Many migrants travel singly or in small caravans. They harvest different crops, work for many different employers in a year, and tend to stay with others sharing the same ethnic characteristics. Puerto Ricans particularly seem to rely on mutual assistance, but they also tend to be more goal-oriented (making money and returning to Puerto Rico). Black migrants may share little in common except their work, despite the seeming similarities between them. It may be that American Indians are even worse off than the blacks. The dockets and interviews suggest that the few Indians living in Orleans County were even more alienated from the larger culture than were black migrants, but this cannot be verified presently.

Action by Governmental Agencies

Action on a collective, perhaps national level, could prove beneficial to migrants and former migrants. Coverage under the National Labor Relations Act might well result in minimum wages, employment standards, contractual arrangements, and some attention to employment agencies and unemployment insurance. The work, despite its local characteristics, probably is inter-state. Certainly the migrants are and the New York State Employment Service considers them so. Also substantial amounts of products tend to cross state lines. The United States Departments of Health, Education, and Welfare and Housing and Urban Development both must consider remedial and preventive measures to help migrants and all rural poor.

A significant step that the latter could take is to examine the applicability of modular housing to migrants and former migrants. National zoning and building codes for mobile homes is another area that could be examined thoroughly.

Obviously New York State has acted in some ways and it can go further. New York State has the capacity to handle some of the problems noted here, and, in fact, is a leader in a number of reforms, notably eligibility for welfare, which rankles some town supervisors interviewed. Local agencies could do more. Possibly they could subsidize the construction of migrant housing. They might examine the feasibility of easing the tax burdens on builders and owners of migrant housing, of reducing taxes for the months during which the housing is not occupied as well as of faster depreciation allowances on the life times of the properties. The voters have an opportunity in November, 1970, to approve increased spending for housing for various groups in the state. The outcome of this referendum will suggest some attitudes toward housing for the rural poor.

Actions by and for Migrants

A further set of recommendations is based on some beginning steps that are being taken by and on behalf of former migrants. The best example is the attempt to develop a cooperative store in northern Orleans County, which represents self-help and which may prove the most lasting form of help.

A cooperative store, offering food, clothing, and alcoholic beverages, or perhaps two stores; one for food and clothing, the other for recreation is a suggestion. In part the appeal is the fact that it can but out one middleman, the retailer. The generally high prices it is claimed are charged by store owners would be eliminated or reduced. The stores would be accessible to more than one camp, which could remove the necessity for migrants to go into villages where they were unwanted. The types of items most wanted by migrants and former migrants would be available, because they would have some choice in the selection of goods.

If the combination store is not approved, a second store or location for recreation could be created. Beer and hard drinks would be purchased at lower prices than at taverns now selling to migrants. Other activities would also be available. Certainly radios and televisions and juke boxes or comparable diversions should be provided.

The recreational program should also include facilities for children. An example of what can be done is the summer educational program conducted by the New York State Center for Migrant Studies at Geneseo. Day care for younger children was provided, while older children enjoyed a full schedule of events. An important feature of the program was the fact that buses picked up the children early in the morning and delivered them late in the day, the hours during which their parents were working. Similar programs were conducted throughout the state, funded by the New York State Center for Migrant Studies.

An important feature of the Migrant Center program was the employment of mobile units which provided entertainment in some of the camps in the evenings. These units could be made a more permanent feature even if other full-scale recreational programs cannot be developed.

In a sense what is sought is consideration for the welfare of the migrant by remedying some of the more pathological aspects of the migrant's life styles. The most noticeable symptom of the pathology is the generally weak self-concept. This disregard for his own importance tends to perpetuate his seeming hopelessness. The migrant defendant in the courts studied typically was thirty-seven years of age and was generally incapable of offering any defense to the charges brought against him. Arrest in his mind was equated with guilt. Failure to request counsel was only in part attributable to ignorance of rights. The sense of unworthiness and hopelessness is also partly due to his feeling of inability to control his fate. The notion of the self-fulfilling prophecy is relevant here. Stated simply, it is a tendency for an individual to respond to another's estimate of his worth in the direction of that estimate. This was particularly noticeable in the number of guilty pleas.

The study performed by Robert Rosenthal and Lenore Jacobson with teachers of elementary school children, many of them Mexican-Americans, supports the positive aspect of the self-fulfilling prophesy.[1] Teachers were given class lists and the suggestion that certain students were chosen for their greater abilities. There was no basis for this suggestion, and, indeed, the particular students were chosen randomly. The resulting progress of the students, the researchers concluded, could stem from nothing but the teachers' attitudes. That is, the teachers had played Henry Higgins to the Eliza Doolittles in the classrooms.

Migrants suffering from social fragmentation and the effects of uprootedness must be helped to develop a better self-concept. The notion that "life's hurts and life's drawbacks...life's calamities--which in this case are inescapable and relentless and unremitting" must be destroyed.[2] At the very least it must not be reinforced by those who can do something about it. One very obvious place is in the courts, the subject of this study, to which migrants are brought without sufficient comprehension of the significance.

While actually a relatively small number of migrants were brought to court and tried for criminal offenses in these two counties, it remains that their treatment calls for corrective measures. For example, public intoxication is a symptom of a life style. A sentence of twelve to fifteen days in jail or a $25 fine is not fitted to the "crime." Such sentences are statutory, but possibly inhumane, and certainly inappropriate.

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[1] Pygmalion in the Classroom

[2] Coles, "Uprooted Children: The Early Life of Migrant Farm Workers," p. 452.

The relative absence of assistance of counsel is significant. The presence of counsel should not be dependent upon a justice's reading (or misreading) of the law or on the interest of a public defender. The right to counsel is inherent, and adherence to this requirement is vital to those inexperienced in criminal law.

Bail reform is another obvious measure that can be instituted to help the migrant and the former migrant. The growers, as well, would be helped by this measure. Establishment of a district court system would be another step toward offering these defendants a better opportunity to know something more than the baseness of the law. Conditional discharges ("get out of the state") are not any more fair to migrants than they are to other, unwanted defendants, even though expedient. The alternative sentence "ten days or ten dollars" should not be permitted in the case of the migrant or other rural poor. The option may be illusory, or more importantly, it may be unconstitutional.[1]

These are only remedial measures, however, and it is the preventive measures that must be sought. There is a need for more favorable employment practices, protections of minimum wages, unemployment compensation, and maximum hours. More and better housing, elimination of unlicensed camps, standards for rent based on the quality of housing, and increased recreational facilities in or near camps are mandatory. Cooperative stores, or some equivalent, allowing the migrant and "resettled migrant" to exercise some control over the purchase of needed goods should be developed. More enlightened control over the sale of alcoholic beverages is vital. More concern for the migrant children, including schooling, recreation, more and comfortable exposures to different cultural activities, and the building of a stronger self-concept may be priorities.

But all of these and more require concentrated effort on the part of the "haves." More money is an expedient, and more money may be required. This money should be directed toward more self-help projects--toward housing, recreational facilities, and cooperative stores.

Most important, perhaps, is the need for comprehension of the depth of the problem. Until the researchers actually sat in justice court rooms, listened to those familiar with migrants, and drove on out-of-the-way, dirt roads to examine for themselves what camps looked like, they too were unaware of the plight of the migrants. It may be that only when each of us takes the time to examine the problem that it will become clear. A 1960 CBS program written by Edward R. Murrow should have been sufficient, but the fact that NBC saw fit to write and show its own program fully ten years later may illustrate the general lack of comprehension. It seems fitting to conclude this study with the words of a troubled Chet Huntley, who observed that "it should be the responsibility of all Americans to see that no American is deprived of the quality of life that the rest of us take for granted."[2]

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[1] Reportedly the California Supreme Court has taken this position, Rochester (New York) Times-Union, September 4, 1970.

[2] "Migrant--An NBC White Paper," July 16, 1970.

And he said "animals,"
dirty and destructive.
A "tribe," Black, ignorant,
troublesome, burdensome.
Ignore and degrade,
keep them out of town,
place below life.
The rootless child
cannot survive the depths
of prejudice.
The despair and hopelessness
socially undermine
and intellectually reduce,
to fear and suspicion
those who stand alone
in a Sea of white ignorance.
To walk to the field, to the bar,
to the dying camp of the oppressors
and they have taken the soul

John Hopf
September 17, 1970

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